

N^o. 30.

By *of* Atty. Gen.^r (Richardson Reynolds)
for Appellants.

Filed Oct. 11, 1897.

OCT. 11 1897
JAMES H. MCKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

ROBERT PERRIN, APPELLANT, }
v. } No. 30.
THE UNITED STATES ET AL. }

BABOCOMARI GRANT IN ARIZONA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

STATEMENT, ABSTRACT, AND BRIEF ON
BEHALF OF THE UNITED STATES.



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On February 27, 1893, ROBERT PERRIN filed a suit in the Court of Private Land Claims against the United States and a number of other defendants, seeking the confirmation of what is commonly called the SAN YGNACIO DEL BABOCÓMARI GRANT, alleging that on December 25, 1832, the state of Sonora, of the republic of Mexico, granted and conveyed to Ygnacio Elias and Eulalia Elias a certain tract of land known and designated as the ranch of San Ygnacio del Babocómari; that said grant was complete and perfect at the time of the transfer of the sovereignty of that country to the United

States; that the form of title was a patent or grant, based upon a sale, executed by José Mendoza, treasurer-general of said state, under the seal of the general treasury of said state. That by mesne conveyances the plaintiff had succeeded to and become the owner of said land, and is seized in fee and entitled to the possession thereof. It alleges also that the petitioner is in actual possession and occupation of all the lands except small portions thereof, which are in the possession of a number of persons named, without the license or permission of the plaintiff. He names a number of persons who claim some interest in said grant, but what he does not know. The petition then sets forth a specific description of the property as shown by the survey of a Mr. Roskruge, and containing 128,000 acres, concluding with the usual prayer for confirmation. (R., 1, 2.)

The answer of the government denies any information or knowledge in relation to the same, and asks that plaintiff be put to strict proof of the allegations contained in the petition. (R., 5.)

The petition is based upon a *testimonio* (Spanish, R., 62-71), translation of which is Exhibit B (R., 72-80). The petition therein is dated Arizpe, March 12, 1827, in which Ygnacio Elias and Eulalia Elias state that, needing a tract of land for their stock, they denounce, in company with Don Rafael Elias, Capt. Ygnacio Elias, and Don Nepomuceno Feliz, a vacant tract of land "*adjoining the ranch of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place of Tres Alamos,*" obligating themselves to pay to the nation the corresponding tax, with all other matters that justice

might require, until title and confirmation shall be obtained. [As stated in my note of explanation found in the statement of the San Rafael del Valle case, CAMOU c. UNITED STATES, No. 28, this petition is the original petition of which the one in the San Rafael del Valle case is a copy, and asks for the same land, with the identical description, as above quoted.]

On July 1, 1827, the treasurer-general, Gaxiola, ordered the *alcalde* of Santa Cruz to proceed in the matter without prejudice to any third person who might have a better right, first citing the adjoining proprietors to the measurement, valuation, and publication for thirty days consecutively of the lands referred to, subject to the sovereign decree of the honorable constituent congress of the state, No. 30, of May 30, 1825, and the regulations accompanying the same, and upon the conclusion of the proceedings taken in the order he was to transmit them to the treasurer-general's office, notifying the bidders to appear personally, or by their agents, at the sale which was to be made at that office after the three consecutive publications (*almonedas*). (R., 73.)

Fifteen months thereafter at the *presidio* of Santa Cruz, to-wit, on October 5, 1828, the act of obedience was executed by Alejandro Franco, constitutional *alcalde* of the *presidio* of Santa Cruz, stating that he would proceed to the *hacienda* of San Pedro for the purpose of measuring the lands asked for by the petitioners. It will be noted that the constitutional *alcalde*, Alejandro Franco, did not sign this act of obedience, but that it was signed for him by Ramón Romero. (R., 73.)

The *testimonio* recites that the *alcalde* surveyor, after summoning the adjoining proprietors, proceeded to the appointment of tally-men, measurers, and recorders, who were citizens Lorenzo Sortellon, Andrez Montoya, Pablo Elias, Antonio Campoa, and Mauricia Neiro, who accepted the appointments and duly qualified under oath. (R., 73.)

The survey recites that at said place (supposedly the ranch of San Pedro), on the said day, month, and year, in order to proceed to the survey, all parties being present, he ordered a cord of fifty *varas* to be prepared, with poles tied at the extremities. The expert surveyor ("*el perito agrimensor*"), José Maria Caballero, proceeded to the survey, and setting up the compass, took a course east northwest quarter east to the west southwest quarter west (*este Norueste cuarto al este para oeste surueste cuarto al oeste*), where he had a cross monument placed, "and from said point through said point there were measured and counted one hundred cords, which terminated in a small valley near some bald hills (*lomas pelones*), where I caused a monument to be placed." (R., 73, 74.) This concluded the survey for that day.

The following day the surveyor states that in the place "where I ordered the second monument put, called the valley of the San Ygnacio del Babocómari," accompanied by the parties, for the purpose of continuing the survey in the same direction, he caused the cord to be examined, and there were measured and counted in the same direction two hundred and forty-three cords, which terminated on a hill (*loma*) which looks south-southwest, where the survey was suspended on account of the roughness of the ground and many deep valleys which occur in

the direction of this survey, wherefore it was necessary for the *alcalde* and the surveyor to estimate fifty-seven *varas* more to complete the side of the three *sitios* for cattle. This estimated, the distance terminated at the hot spring in front of the Santa Rita mountains at the foot of a bald hill (*loma palon*), where he ordered a corner monument placed, which looks toward the slope of said mountain and Hot Spring, from which point, on account of the roughness of the ground and deep valleys, in order to measure the sides of these *sitios* and to square the measurements already stated in said direction, the surveyor and the *alcalde* estimated toward the northwest quarter north-northwest to the southeast quarter south-southwest (*Norueste cuarto al Nornorueste para Sureste cuarto al Sur-surueste*—R., 65, line 24) sixty cords, to the foot of a small cottonwood tree in a small valley at the foot of the said Santa Rita mountains, and to complete the side of the square in the opposite direction south-southwest quarter south-east to the north-northwest quarter northwest (*Susurueste cuarto al sueste para el Nornorueste quarto al Norueste*—R., 65, lines 28–31) the remaining forty cords were estimated, and ended on a hillock that has several oak trees, where he ordered a corresponding monument to be placed, which, with these three *sitios* for cattle and the one surveyed the day before, four *sitios* were completed, and it being midday, it was ordered that they return to the center monument, and when they arrived at said monument, in front of the *ciénega* of San Ygnacio del Babó-cómari, and having again examined the cord, the surveyor stretched the cord in the direction west-southeast to the east-northwest (*ueste Sueste para Este Norueste*—R., 65,

line 41), and there were measured and counted seventy-four cords, which terminated upon some small hillocks near the point of the water (*punta de la Agua*), and the survey was concluded for the day. (R., 75.)

On the following day, with all the parties and "*el perito agrimensor*," he again caused the cord to be examined and stretched along the same course, and there were measured and counted twenty-six cords to complete the hundred cords for the side of one *sitio* for cattle, and in the same direction, the cord passing over several hillocks and valleys, there were measured and counted three hundred cords, the last ones passing along the valley near the tanks of the spring of water and ending above said tanks on a rocky hill, where he ordered a corner monument to be placed, which completed the side of the other four *sitios*, where the surveyor, having set up his compass, placed the cord and the square, and forming from the preceding course a right angle "or angle of ninety degrees," and again having examined the cord and stretched it in the direction south-southwest quarter southeast to the north-northwest quarter northwest (*Sursureste cuarto al Sueste para el Nornorueste cuarto norueste*—R., 66, line 37), there were measured and counted forty cords corresponding to those of the former side of the other *sitios*, these latter terminating upon some bald hills, where he ordered a corner monument to be placed.

Returning to the center of the measurement of this side in the opposite direction north-northwest quarter northwest to the south-southwest quarter southeast (*Nornorueste cuarto al Norueste para el sursurueste cuarto al Sueste*—R., 66, line 45), there were measured and

counted sixty cords to complete the hundred cords terminating on the summit of a very high hill, with which the survey was terminated, completing the total eight *sitios* for cattle registered by the citizen Ygnacio Elias and his sister Donna Eulalia Elias, which he received, being satisfied with said survey and being notified to in due time mark his boundaries with monuments of stone and mortar. (R., 75, 76.)

The *testimonio* further recites that after the survey the *alcalde* proceeded to the valuation of the land, appointing intelligent experts for that purpose who took the oath in accordance with the regulations and valued the tract in the sum of three hundred and eighty dollars, for the reason that six *sitios* of the tract contained running water, and two *sitios* thereof being arid, they valued at ten dollars per *sitio*, and upon this valuation the *alcalde* offered the tract for sale for thirty days, and no purchasers appearing, the *expediente* was concluded, and by letter of November 30, sent to the treasurer's office for the necessary proceedings in the matter, and by the order of December 19 the same was referred to the attorney-general for report. (R., 76.)

December 20, 1828, Felipe Gil made his report to the treasurer-general, in which he states the *expediente* contains the survey of eight *sitios* of land for breeding horned cattle and horses, and he found nothing in the proceedings to prevent the adjudication of the land to the petitioners, unless it be that the quantity exceeded that mentioned in article 21 of the decree of May 20, 1825, but if the treasury was satisfied as to the requirements recited in the twenty-second article, he was of the

opinion that the land should be sold to the denouncers as there was no one willing to pay a higher price for the same. (R., 76, 77.)

The *testimonio* further recites that the treasurer-general, being satisfied with the foregoing report of the attorney-general, by proceedings of the twenty-second, the three *almonedas* were made, notifying purchasers, and none appearing, the eight *sitios* of land were sold to the denouncers. The third *almoneda* is recited in the *testimonio* and dated on the 24th of the month. (R., 77.)

It further appears that the agent, Capt. Ignacio Elias Gonzales, deposited in the treasury three hundred and eighty dollars, as appears by the certificate of the treasurer-general. (R., 77, 78.)

The whole was concluded by the certificate of the treasurer-general, dated January 8, 1829. (R., 79.)

This concluded the *expediente*.

On December 25, 1832, José Maria Mendoza, treasurer-general of the state of Sonora, executed the grant or patent, in all respects similar to that in the San Rafael del Valle case, No. 28, on the present docket. This title was not delivered till May 8, 1833, evidently having been withheld on account of the letter of Nicolas Maria Gaxiola, of April 25, 1828 (to be found on page 199 of the record in the San Rafael del Valle case, No. 28, *Canon v. United States*).

Then follows communication No. 762, being an order of Governor Bustamante on the treasurer-general to issue the grant. (R., 79.)

It is admitted on behalf of the United States that the *expediente* in this case is on file in the archives, and that

the *toma de razon* of the same has been made in the proper book, as of date May 8, 1833; that the petition is in the usual form.

The questions involved in this case are identical with those of the San Rafael del Valle case, above mentioned, with the additional point that the survey in this case is void for uncertainty.

It will be noticed that the location of the San Pedro grant is absolutely necessary to be determined, and this grant, as now located, is many miles from the San Pedro as located and confirmed by the Mexican government, which will appear by the testimony of Mr. Bonillas in the San Rafael del Valle Case and his map attached thereto. (R., 200.) It will also be noted that the petition in this case is for the same land desired in the petition for the San Rafael del Valle grant, and also for the Boquillas y Nogales grant.

R. C. HOPKINS testified on behalf of the plaintiff, and his testimony may be included in an admission by the government that the *expediente* is in the usual form; that the signatures, as far as the government is able to determine, are genuine; that the *toma de razon* of the same exists in the proper book in the proper archives.

Witnesses RAMON ALDARETTA, ISODORO CASTRO, JESUS NUNEZ, and JOSÉ RODRIGUEZ testified on behalf of the plaintiff that they had seen stock of the Elias's on the Babocómari ranch from time to time, and also their ranch houses. (R., 14-26.)

GEORGE J. ROSKRUGE testified on behalf of the plaintiff. This is the same witness who made the surveys in

the Sonoita, Canoa, and San Rafael del Valle grants, and whose peculiar manner of construing the calls of the *expediente* has been noticed in the briefs in those cases.

He testified that he had occasion to make a survey of the Babocómari grant, which was evidently made under very unfortunate conditions, as shown by his answer. (R., 26.) Says he did not make a regular survey; a certified copy of the *expediente* was delivered to him by Mr. Cameron; states that he went to the center to look for a monument, "but of course quit looking for the monument." Witness went to the *ciénega*, about where the center monument would be, and then started west toward the hot springs, which are now called the Monkey Springs. The spring is a warm spring, and near it he found a monument of stones on the ridge overlooking the valley and facing the Santa Rita mountains; "the monument that I found there was an old monument, of course."

Witness produced a photograph of the same, which was marked Exhibit 1.

This he designates as the west center monument. From this point he went up what he calls the Bachata cañon about five miles and sixty chains, where he found a big cottonwood tree in a little valley right in the foothills, the tree being about five feet in diameter.

Witness produced and identified a photograph of the same, which was marked Exhibit 2.

There is no other cottonwood tree in the neighborhood. After leaving the cottonwood tree he ran from the west center monument in a southeasterly direction to

the top of a high hill, where he found an old monument of stones; from the top of this hill he could see the cottonwood tree, looking over the spring. Witness produced and identified a photograph of the monument on this hill, the southwest corner monument looking toward the Santa Rita mountains, which was marked Exhibit 3.

Exhibit 4 witness identified as a photograph of the hot springs.

Exhibit 5 witness produced and identified as another photograph of these hot springs.

Exhibit 6 witness produced and identified as a photograph of the little valley at the foot of the Santa Rita mountains, showing the cottonwood tree, which is the northwest corner monument.

Exhibit 7 witness produced and identified as the west center monument at hot springs, looking up the *cañon* toward the cottonwood tree.

After that, they went back to the center monument or to the ranch house near the center, and then started down to the bald hills, riding across the country on horseback toward the east; they found nothing over this course until they got to the bald hills, which were three in number altogether.

Witness produced and identified a photograph of the same, which was marked Exhibit 8.

Exhibit 9 witness produced and identified as a photograph of the southeast corner monument on bald hill.

Further, he went north toward the *cañon* and searched for the monument which is described as being near some tanks of water, and, as witness understood, little rocky

hills, and he did not have any trouble in finding it. He designates this as the east center monument on the rocky hill; produced and identified a photograph of the same, which was marked Exhibit 10.

He kept on toward the north to the first high hill he found; on top of that hill he did not find a monument; he is satisfied he did not.

Witness produced and identified a photograph of this hill, which was marked Exhibit 11.

Witness states that in going from one of these points to the other they did pay attention to the distances; that the point of the *cienega* is located on his county map; he passed right through that *cienega* and knew to a foot where it was, and in coming by the hot springs that is a surveyed line, and he knew where it was; when on top of this hill, the west center monument, he took his bearings from a corner of the standard line and another from what is called the Casa Blanca. From the northwest monument he took his bearings to the southwest monument, and then took other bearings which he does not recollect. He had run lines in there for grants, but forgot just what he had done. He took enough to satisfy himself that he could place it on the map, and did the same at the other corners. With this data he came back and made the map showing the whole country, and from his triangulating points he protracted the whole thing out as he did in the Sonoita grant. He had a copy of the *expediente*; there were courses set out in it and they were apparently run by a mariner's compass, and he thinks they are a little mixed; does not remember whether he

followed those courses, but supposed he did. Says that the end boundaries correspond to those called for in the *expediente*, and he has not the slightest doubt in the world but they are the same.

Taking the *expediente* and following the calls thereof he would have no difficulty in locating this grant according to the natural calls. From the data he obtained in making the survey he compiled the map in evidence. In coming from the center station toward the point of the bald hills easterly he found some tanks (water-holes), which were the only tanks he saw in the neighborhood. They were west from the rocky hill, as he remembers.

On cross-examination witness testified that he had lost his field-notes. When he speaks of monuments in his testimony, he means piles of stones, unless he designates the monument as a hill. Referring to his map, he says that he has no doubt but that he has correctly designated the grant thereon according to the calls of the *expediente*. If a correct construction of the *expediente* calls for square corners, instead of acute or obtuse angles, he says he has not laid it down correctly.

At this point counsel for plaintiffs admits that there is more distance in the calls of this survey than in the calls of the original survey contained in the *expediente*.

Witness says he made the width of the grant in one part five and a half miles, and in another part wider; the line between the northeast and southeast monument is about nine and a half miles; states that if a proper description of the *expediente* is that the grant is one league wide, he has taken about three times too much.

In extending his map, he did not pay any attention to the measurements expressed in the *expediente*, and paid no attention to distances at all. In extending the lines on the grant, he did not remember whether he paid any attention to the courses, as they were terribly mixed up. Does not recollect whether he followed them; that he went straight from the *cienega* to the hot springs in the valley on horseback, in company with Mr. Cameron and Mr. Bruce, and does not remember whether anyone else was with him or not, but he knew where the hot springs were before he started to them.

Witness was unable to state how to solve a triangle, and what parts were necessary to be known to find the others. (R., 35, 36.)

Witness then proceeds to give an account of how he scaled the survey on a sectional map. He states (R., 37):

Q. Now, the calls of the *expediente* require that the line from Monkey Springs eastwardly to the center was three hundred cords. Why did you protract this map upon the ground so that the line would be nearly six hundred cords long?

A. Because I made a map showing what I believed to be the original calls of the *expediente*, knowing very well that the Mexicans never measured an inch of it.

Q. You were going on the theory that when those gentlemen said they measured three hundred cords, as a matter of fact they measured six hundred cords?

A. I know they never measured an inch of it.

Q. Did you go on the theory that they were not on the ground?

A. That I didn't know anything about?

Q. Didn't you go on the theory that they measured it as you did—on horseback?

A. Of course they did; that is what they say.

Q. Did not Brewster (Bruce or) Cameron point out to you every pile of stones that you have there?

A. No, sir; Mr. Bruce got tired and left. He had business somewhere else.

Witness states that the *expediente* called for an eight league grant, but he did not protract it with any regard to the size of the grant or quantity of land, and no attention was paid to courses and distances; that if he had been trying to verify an American surveyor's survey, he would have tried to find the lines and measure them, but that would be different in verifying the survey of a Mexican surveyor, and, going over the grant, he would find his lines ten or fifteen miles out; that he endeavored to run the lines of this *expediente* again and again, but found the *mesas* called for ten or fifteen miles ahead of him, and therefore he could not see the use in stopping in the middle of a plain; that the courses used by the Mexicans were terribly stretched and their estimates a little out, and he did not try to retrace them. Witness states that fifty cords is a unit of measure well known among surveyors; that his excuse for not measuring from the center westward is because he was afraid that a man living on the grant would kill him (R., 39), although he managed to get from the center monument to the Monkey Springs and all over the grant on horseback.

Without going further into the rambling testimony of this witness, it is apparent that he did not attempt to make a survey of the grant, and located a number of natural

objects that might possibly correspond to those called for in the *expediente*, locating them with reference to the section corners of the public surveys, and then scaled an area of one hundred and twenty-eight thousand acres for an eight-league grant, and testifies now that it is according to the calls of the *expediente*. This is a fair sample of his testimony in every case, in which the court will have occasion to notice it. (R., 26-43.)

F. C. MERRILL testified, on behalf of the defendants, that he first came into the San Pedro valley in 1846, coming over what is known as the Guadalupe pass near, the San Bernardino ranch, and from there went westerly across the foot of the San José mountains to the San Pedro river, going down the valley till he passed the mouth of the Babocómari, and then crossed to the *ciénega* at Pantano. That there was no one living in the country when he passed through; that the *ciénega*, as well as he remembers, it being forty-eight years ago since he was there, was about four miles across from the San Pedro. He tried to avoid the river on account of the roughness of the hills. States that he saw no inhabitants on the San Pedro or on the Babocómari. (R., 43-45.)

CHRISTOPHER LAYTON testified, on behalf of the defendants, that he came into that country in 1846; had enlisted in the Iowa volunteers, and came in there with Colonel Cook during the war with Mexico; that he crossed the San Pedro river somewhere above the mouth of the Babocómari, coming by the San Bernardino ranch and striking westwardly across the San Pedro, and

then across the Babocómari to the best of his recollection, some little distance above its mouth. There was nobody living in the Babocómari valley at the time. States that he went back there eleven or twelve years ago and found Colonel Merrill there; that he went up the Babocómari there at the time, and found people living up there, but he does not know how they claim; thinks they claim under the public land laws.

Witness states that he was with the first expedition that came in there, which came around the Whetstone mountains, and witness helped raise the Stars and Stripes at Tucson. (R., 45-47.)

WILLIAM J. ROSS testified, on behalf of the defendants, that he first saw the valley of the Babocómari in 1868, when he was in the army, and no one was living there at the time between what is known as Crittenden down to its mouth and occupying it as a grant. There was a garrison of soldiers at Fort Wallen. (R., 48.)

PETER R. BRADY testified, on behalf of the defendants, that he came to the valley of the Babocómari in April, 1854, and there was no one living there at all. (R., 48.)

HENRY O. FLIPPER testified, on behalf of the government, that he was a civil engineer, and employed as special agent of the Department of Justice; that he had been to the city of Hermosillo, Sonora, Mexico, and examined the archives there with reference to the Babocómari grant; that he had with him the *testimonio* of title of that grant and compared it with the *expediente* there; that the one was not an exact copy of the other; that the

testimonio began with the preamble and ended with a granting clause, neither of which are in the *expediente* in Hermosillo; that the *pregones* and *almonedas* are given in full in the *expediente* in Hermosillo and are not so given in the *testimonio*; that he found no copy of the grant in Hermosillo as attached to the *testimonio*; that Mr. Rochin, in charge of the archives there, gave him all assistance in his power. Witness also described the character of the paper on which the instrument at Hermosillo is written. He testified that he had had occasion to investigate Mexican and Spanish archives in relation to private land claims; that he first began his work in that respect in 1882, in the survey of public lands under concessions given by the Mexican republic; that he had been engaged in that work in Mexico ten or eleven years; that he is thoroughly familiar with surveys under the Spanish and Mexican systems as they existed in Sonora and Mexico; that his surveys were principally in the states of Sonora and Chihuahua; that stamped paper had different prices according to the tax the government collected on documents; that paper dated for the year the document was made had to be used; that when there was no paper made for that year, paper of some other year was used, but it was marked at the top that it was good for the year in which used; that no such notations were made in the *expediente*; that the official who sold the paper should make such notations.

Witness also testified that he compared the notes of survey in the *testimonio* with those in the *expediente* at Hermosillo and that they are the same in both instruments; that he could not locate the property from the

calls as given in these two instruments, because some of the calls are impossible.

Witness took a translation of the *testimonio* of title and went to the blackboard, and reading the first course, "east northwest quarter east to the west southwest quarter west," testified that "east northwest quarter east" was impossible, because it passes a cardinal point, and "west southwest quarter west" was a possible course, and illustrated it on the blackboard, drawing a line to represent the first course and the first one hundred cords measured to a point in a little valley close to some bald hills. Witness prolonged the line on the blackboard to represent the two hundred and forty-three cords measured and counted, and the fifty-seven cords estimated, both in the same direction as the first one hundred cords. He also testified that the next course was a possible one, and drew a line on the board representing its length of sixty cords; that "southeast quarter southwest" could not be determined, because it passes a cardinal point; that "north-northwest quarter northwest" can be determined, and indicated on the blackboard how that course would run; that returning to the center monument and thence "west southeast and east northwest," measuring seventy-four cords, then estimating twenty-six cords, finally measuring three hundred cords, was impossible, because that course could not be determined; that the lines he represented on the blackboard were the only ones he could lay down, the others being impossible; that, if the natural objects located by Mr. Roskrugs are topographically correct on his map, the courses the *expediente* calls for, if run out from the center, would not go to those

natural objects ; that if the distances were run out, they would not go to them ; that if he could get out to the end of a line he indicated on the blackboard and knew what direction to give the next call—"south-southwest quarter southeast," which is also impossible—he might be able to lay out more of the calls of the title papers which correspond with the calls of the *expediente* at Hermosillo ; that the next call, "north-northwest quarter northwest," is possible and so is the next, which is the same, but "south-southwest quarter southeast," is impossible ; that it is impossible to lay them down, because they go from a point that can not be laid down itself ; that there is no way to lay this grant down so as to close it up ; that most of the calls are impossible and angles and distances given in the *expediente* can not be laid down at all ; and that the calls and distances would not go to any of the natural objects, nor anywhere near them, but in a different direction ; for instance, the hot spring is pretty nearly due west from that point (indicating the initial point) and the line called for is south seventy degrees west, so following this course the line would go nowhere near the hot springs ; that following the course from the center line, running it out any distance, it would not go anywhere near Mr. Roskruge's point, because his center monument is wrong, is not the true center monument ; that he had had occasion to examine the country with reference to piles of stones called by Mr. Roskruge "monuments" on his center line ; that he describes the center monuments as being in the *cienega* (marsh), while there is no monument there

whatever; that on the north side of the *cienega*, probably three hundred yards from it, there are three piles of stones on a line nearly east and west, each of them about eight inches high and three feet wide, of small loose stones; that the middle one contained nine large stones, each about eight by eight by six inches; that the west one has stones about the size of those in the middle one and is about three feet across; that the middle pile is forty feet from the west pile and thirty feet from the east pile; that he had found any number of monuments of the same character all over that country and ascribed them to Indians.

Witness further testified that there is no monument at Monkey Spring itself; that the spring is in a vale and about two hundred yards west of it, on the top of a hill, is a loose pile of stones; that the monument described in the *expediente*, where the estimated distance terminates at the hot spring, at the foot of a bald hill, he could not find at the foot of that hill not even one rock in any direction till he got to the top of the hill, and then there is the pile of loose stones, just thrown together, not piled up at all, probably four feet across, of the same kind of stones seen in other places; that he had reduced to cords the various lines laid down on the Roskrige map; that the distance from the center point on this map to the east center monument is five hundred and eleven cords; from the east center to the northeast monument two hundred and sixty-seven cords; from the east center to the southeast monument, ninety-five cords; from the starting point at the *cienega* to the west center monument,

five hundred and sixty-four cords; from the west center monument to the northwest monument, two hundred and nineteen cords; and from the west center to the southwest monument seventy-six cords, being Mr. Roskruge's distance in miles and chains reduced to Mexican cords; that a linear league contains one hundred cords; that he had calculated the area of the grant as given on that map; that the figure does not close; that he balanced the figure and found it to CONTAIN ONE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED ACRES OR ABOUT THIRTY AND ONE-HALF SITIOS; that in the *expediente* there is a recital as to why title had not been issued to the effect that the government of the state of Sonora had consulted the congress of the union as to authority to issue titles and until answer was received the treasurer-general gave a certified copy of the *expediente* to the party; that he saw a similar recital attached to the *expediente* of the Boquillas at Hermosillo, signed "Gaxiola, treasurer-general of the state of the west," dated April 25, 1828.

On cross-examination, Mr. Flipper testified that he had no way of knowing whether the courses were mistakes; that he could not take the calls of the grant and locate the east center monument; that it is impossible to know what the call means; that the translator did not know what it meant; that it had been corrected a dozen times in the claimant's translation; that "southeast quarter south-southwest" was impossible; that he went to the east center monument, and that there is a rocky hill there, but no tank of water, nor any before reaching

there; that, disregarding wrongful courses and distances, the rocky hill does not correspond with the call for the east center monument in the *expediente*, because there are not only the rocky hill marked on the map, but five or six of them running across, as indicated by witness, and that he did not know which one was referred to in the *expediente*; that he did not go to the southeast, northeast, northwest, or southwest corners, but only over the center line; that he had followed the general trend of the Babocómari creek, which runs generally east and west; that the valley and creek generally are included within the Roskruge map, and that the latter goes over on to the head of the Sonoita creek; that it passes one of the hot springs, there being two of them, one near Fort Crittenden, east of Monkey Spring and south of Fort Crittenden (indicating on the map); that the spring on the Roskruge map is called Hot Spring, and the other Monkey; that he had known Hot Spring since 1886 or 1887; that the Hot Spring witness speaks of is in a valley, on the south bank of the Sonoita creek; that the southwest and northwest corners are not visible from there; that the Santa Rita mountains are in full view from there, from that spring; that the *titulo* is on the proper paper; that all official documents are required to be written on stamped paper; that he had examined a great many other *expedientes* and matrices in Sonora, all on stamped paper; that the law requires all *expedientes* to be on stamped paper; that the laws of Sonora of 1825 and 1834 say that proceedings shall be on stamped paper and the denouncer of the land shall pay for them; that he knows of no law

that particularly says matrices shall be on stamped paper, but that proceedings and documents shall be on stamped paper; that Monkey Spring is the larger of the two springs, and is a mile or a mile and a half from the other, nearly due south from Hot Spring. (R., 48-57.)

R. R. RICHARDSON testified on behalf of the defendants that he went to the Babocómari in 1881 or 1882 and has lived in that part of the country ever since; that Camp Crittenden is the headquarters of one of his cattle ranches; that the spring there is a large warm spring, and they ditch it down the valley about eight miles for irrigating; that there is another spring about a mile and a half farther south and about three times as large as this one, it being a warm spring also; that they run the water about seven miles down the valley and use it for irrigating; that the warm springs run down the Sonoita and the watershed between the Sonoita and Babocómari is broken. There are four or five families living in the Babocómari claiming under Government entries. Witness states he is acquainted with the foothills of the Santa Rita mountains and has ridden all over them after cattle. There are quite a number of *cañons* coming down from them toward Camp Crittenden, and there are cottonwood trees in almost all of these *cañons*, but he does not know of a cottonwood tree in any of these *cañons* having a distinctive mark on it; that the watershed from the Santa Rita mountains runs down all the *cañons* from the mountains, and there are a great many *cañons* there for miles. Witness states that he does not know the distance between the west center monument of the Roskruge map and the west center

monument—does not know anything about the monuments. Witness states that it is about thirty miles from Camp Crittenden to Fairbanks in a rough guess.

On cross-examination, witness states that not all of the *cañons* coming down from the Santa Rita mountains had cottonwood trees in them, but most of them had; does not know the *cañon* where the little cottonwood is, as mentioned in the survey, but he has been all over all of them. States that he has been on top of the hill southwest of the Monkey Spring and found piles of stone in a great many places there, and looking from the top of the hill he could see quite a number of cottonwood trees in different *cañons*, and does not remember noticing any one particularly. (R., 59, 60.)

Then followed the offers of documentary evidence as appears in the record.

BRIEF AND ARGUMENT.

Many of the questions involved in this case have been discussed at length in the Government's briefs already filed in certain Arizona cases on the present docket, and appreciating that another discussion of the Government's position with regard to them would accomplish no end save wearying the attention of the court, I content myself, specifically citing each case wherein the proposition is discussed, with the statement that

THIS GRANT IS VOID FOR THE FOLLOWING REASONS:

1. Because the title was not lawfully and regularly derived from the Government of Spain or Mexico, or from any of the states of the republic of Mexico having

lawful authority to make grants of land. (See brief in *United States v. Coe*, No. 8, and *United States v. Maish et al.*, No. 297.)

2. Because it has not been approved, ratified, or confirmed by any official or official body of the Mexican republic having authority to bind the nation in that behalf. (See brief in *Ainsa v. United States*, No. 27.)

3. Because it has been declared invalid by the supreme treaty-making power of the Mexican republic. (See Santa Ana's decrees, Nov. 25, 1853—Reynolds, 324, et seq. See briefs in *United States v. Coe*, No. 8, and *United States v. Maish et al.*, No. 297.)

4. Because it had not been located at the date of the treaty of 1853, and consequently falls within the principle announced by this court in *Ainsa v. United States*, 161 U. S., 208.

5. Because of uncertainty in the description of the land attempted to be granted.

This brief will be devoted to a discussion of the last two propositions mentioned.

I deem it proper to notice the statements and conclusions made by counsel for appellant in his original brief; the sources from which he derived his information can not be relied upon, as I shall endeavor to show.

Counsel is mistaken in his proposition (Brief, p. 25) that "as late as May, 1875, the right of the states to the vacant lands within their limits was expressly declared by articles 5, 6, and 7 of an act of congress of the Union. (See Hall's Mexican Law, secs. 528 to 535.)" The citation from Mr. Hall does not sustain the contention.

The law of May 31, 1875, does not declare, in any of its articles, either inferentially or expressly, "*the right of the states to the vacant lands within their limits*," "Articles 5, 6, and 7," or rather sections 5, 6, and 7 of article 1, are (Orozco, Vol. II, p. 805):

ART. 1. The executive is authorized, until a law is enacted which shall definitely determine and regulate everything relating to colonization, to make it [colonization] effective by his direct action and by means of contracts with private enterprises upon the following bases:

* * * * *

V. That of appointing and putting in operation the exploring commissions authorized by section 26 of the present appropriation law, in order to obtain colonizable lands, with the requisites which they must have of survey, delimitation, valuation, and description.

VI. That of obtaining, for habilitating a tract of public land with the requisites which the preceding section requires, by him who fulfills these requisites the third part of said land or of its value, provided he does it with due authorization.

VII. That this authorization shall be of the exclusive jurisdiction of said executive, who shall not deny it [authorization] to a state, which claims it with respect to a tract of land situated within its territory, the authorizations which may be granted to the states and to private individuals being without effect and without right of prerogation, when, three months after they have been obtained, the corresponding operations have not been undertaken.

In a footnote to this section VII, Mr. Orozco says:

That these *authorizations* shall be of the exclusive jurisdiction of the federal executive. *Hoc dicit.*

By this law is proclaimed, with the greatest clearness, the principle that the public lands are the property of the federation and NOT of the states, a matter we will occupy ourselves in carefully demonstrating in title 3, book 3, of this work.

Mr. Orozco draws from this law a conclusion diametrically opposite to that drawn from it by counsel, but he was not trying to sustain an invalid land grant.

Referring to page 3 of his brief, the "*ranchos*" granted to the Elias family were NOT the "*first industrial barriers that were formed between the Apaches * * * and the southern and civilized settlements in the central and southern parts of Sonora.*" There were "*presidios*" and settlements at San Bernardino, established in 1821; at the town of Fronteras, established during the last century; at San Pedro, adjoining these very lands; at Sonoita, which was within four or five miles south of Babocómari and was an ancient town or mission and located again in 1821; San Rafael de la Zanja, to the southwest of Babocómari; the mission of Tumacacori and Calabazas, established about 1696; the San Javier mission, and the military garrison of Tubac, directly west of and within a few miles of Babocómari and Tucson.

The settlement at Tucson is one of the oldest in the United States, perhaps the second oldest, ranking after San Augustine, Florida, and probably before Santa Fé, New Mexico. History does not show that it was ever abandoned. The presidio of Tubac is also more than a century old and but a few miles from Babocómari. Both of them are many, many years older than Babocómari or the members of the Elias family who acquired that grant, and were garrisoned by federal troops at that time.

The Eliases say nothing about Indians in their application, nor is anything said about them except in the granting clause (R., 78, line 39), where what is said is nothing more than the formula usual at that time, because the country was subject to Indian raids at times.

The surveyor of the Babocómari was not disturbed by Indians nor were the surveyors of the San Rafael del Valle or San Juan de las Boquillas, also denounced and surveyed for the Eliases. (Appellant's brief, p. 4.)

Attached to this brief as Appendix I is a certified copy of the translation of the *testimonio*, made by Mr. Hopkins for the surveyor-general, which was originally filed in this case by appellant, but discovering that the government was preparing a vigorous attack upon the same, he withdrew it (R., 11 and 13) and substituted another now appearing in the record, which is correct, except the omission to translate the word "*perito*" contained in the notes of the survey (Spanish [R., 64, 65, 66], and translation [R., 73, 74, 75].)

Counsel was not satisfied with the condition of the record on the question of survey and wrote Mr. Hopkins in relation to the matter; his reply is embodied in appellant's original brief, pages 7-11.

Mr. Hopkins, in this communication, as he did in his official translation for the surveyor-general of Arizona, displays an overzeal and careless regard for the correctness of his translation, and his assumed knowledge of Spanish and Mexican law and history has no foundation in fact. He charges the surveyor of this grant with ignorance, "*since he sometimes writes 'oeste' with a 'u,'*

thus, 'ueste,' and 'este' with a 'r,' thus, 'veste.'" (Appellant's brief, p. 9.) These words can all be found in any respectable Spanish or Spanish-English dictionary just as written in this *expediente*. See, for instance, Salvá, Paris, 1879; Velazquez or Lopez and Bensley, Spanish-English Dictionary, 1882, or any other. The spelling of these words with an "o" is entirely modern. The surveyor did not write "este" with a "r." It was "ueste," he wrote with a "r," and he wrote it correctly, too. The "r" was formerly used entirely in place of the "u." The "*Nuevo Diccionario de la Lengua Castellana*," New Dictionary of the Castillian Language, Paris, 1860, under the letter "U," says:

U, feminine. The twenty-third letter of our alphabet and the fifth vowel in almost all alphabets derived from the Latin. Formerly it was confounded in manuscript with consonant "V" and both letters have preserved the same name in our language; that is, one is called "vowel u" and the other "consonant u."

The *alcalde*, Alejandro Franco, did NOT make the survey of the Babocómari. He was commissioned to do so. (R., 73, line 3.) The survey was made by the "*skillful surveyor, citizen José Maria Caballero*" (R., 73, line 47), "*por el perito agrimensor ciudadano José Maria Caballero*." (R., 64, line 22.) The word "PERITO" in the original Spanish, meaning "*expert*" or "*skillful*," is omitted in the translation. By whom "*citizen José Maria Caballero*" was appointed or by what authority he made the survey, nowhere appears; but being a "*skillful surveyor*," it must be assumed that he was NOT ignorant and knew how to use the instrument with which he was provided.

The *alcalde*, Alejandro Franco, could not even write his name, and it was written for him by Ramón Romero. (R., 73, line 31, and elsewhere.)

The surveyor took no "*backsights on the lines he was running*," nor does he anywhere say so. Mr. Hopkins does NOT claim, among his other accomplishments, to be an "expert" or "skillful" surveyor as was citizen Caballero. What the surveyor, "*citizen José Maria Caballero*," attempted to do, and that much is perfectly apparent to any modern surveyor, except, perhaps, Mr. Roskrige and translator Hopkins, was to describe the two compass points through which his line ran—that is, to read his compass at both ends of the needle. Thus, if he had said, in his second course, *northwest quarter north-northwest to southeast quarter south-southeast*, the description would have been perfectly intelligible then, now, or at any other time, and the line so described would have been that marked on the sketch "A" herein with the letters "*d*," "*A*," and "*f*," a single straight line through three points.

Mr. Hopkins again errs when he says the surveyor "*took no bearings*" from the initial point, where "*he only placed a cross*." In contradiction to Mr. Hopkins, the *expediente* says he "*had a cross monument placed*," and from it "*took a course*" or bearing. (R., 73, last line.) And when he returned to the center (R., 75, line 10) he took another course ("*rumbo*," here translated "*direction*"), to survey the other portion of the grant. How is it possible that he "*took no bearings*" when "*he measured one hundred cords on a given course to a*

natural landmark?" Mr. Hopkins has forgotten that "bearing" and "course" are synonymous.

The initial point CAN NOT be "*ascertained by retracing this line of one hundred cords to the initial point,*" because that course is not intelligible, as will be hereinafter explained. Being at that "*natural landmark,*" how is one to know in what direction, on what course, or on what bearing to go to find the initial point?

There is not a grant in all Arizona in which the survey is not better described than in this one. In either of the two others, made upon the same petition to the Elias family, at the same time as this one, the San Rafael del Valle or the San Juan de las Boquillas, the descriptions of the survey are infinitely better than in this one.

These descriptions are precise, definite, clear, plain, and intelligible, and the survey was not made by a "*skillful surveyor*" either, but by the "*constitutional police alcalde of the presidio of Santa Cruz.*"

The "*boundary landmarks*" in this grant were not "*established by bearings to other objects.*" No "*bearings*" were taken to objects of any kind, AS AN ACT ANTECEDENT, but a course was observed from the compass and a line run which terminated at or near or upon a natural object, and that object is mentioned and described merely as *a witness* to the monument, which, it is said, was placed there. The description in this grant is identical in form and substance with those in all other grants in Arizona, except here the description is indefinite and uncertain as to the courses. There is nothing in the *expediente* to show that, after a monument was placed, a "*bearing*" was taken

from that monument to any other point whatever, natural or artificial.

In all other land grants in Arizona, as a rule, so-called monuments (piles of stone) are found in the general directions described in the survey, though always at much greater distances.

It is true the field notes of the survey were approved by the *promotor-fiscal*. It was his duty to examine them and see that they were correct, or have that done by some one who was competent to do so. He was very particular in the Nogales de Elias case. (*Ainsa v. United States*, 161 U. S., 208.) He, the surveyor, and the appraisers assumed that the survey was correct, for they appraised *eight sitios*, and *eight sitios* were paid for. It is to be observed here that the Babocómari was denounced by *two persons only* and the title was issued to *two persons only*, Ygnacio Elias and Eulalia Elias, in the proportion of *four sitios to each*, which was the amount allowed them by article 21 of the state law of May 20, 1825, No. 30 (Reynolds, 130), and that they asked for no more, and could acquire no more lawfully, and did not attempt to in this case.

(Appellant's brief, p. 56.)

Mr. Flipper has NOT been misled by incorrect translations nor by the illiteracy of the original surveyor, whom the *expediente* describes as a "*skillful surveyor*." Mr. Flipper is both a competent and skillful surveyor and a Spanish scholar. It was the surveyor-general of Arizona who was misled by the incorrect translation of

this *expediente* made by his expert, Mr. R. O. Hopkins, an employee of his office.

Mr. Roskruge testified (R., 27) that he had a copy of the *expediente* certified by the surveyor-general. It was a certified copy of the translation made by R. O. Hopkins, the same or another certified copy of which was filed with the papers in this case and withdrawn (R., 11-13.) That part of that translation relating to the survey is as follows, the italics being mine:

Whereupon the surveyor proceeded to the measurement of the lands in question, the surveyor being the citizen José Marie Caballero, who, after setting his compass, took the direction *east northeast a quarter east and west southwest a quarter west, fore and back sights*, where a cross was placed as a landmark, * * * and from this point, the rough character of the country continuing, in order to run the head line of the survey, and squaring the tract surveyed, the surveyor and myself estimated *northwest a quarter north northwest and southeast a quarter south southeast, fore and back sights*, sixty cords as far as a cottonwood standing in a little valley at the foot of the said Sierra of Santa Rita, and for the completion of the head line, in the opposite direction of *south southwest a quarter southwest and north northeast a quarter northeast, fore and back sights*, we estimated forty cords, which terminated on a hill. * * * We returned to the central monument * * * the line was run *west south southwest and east northeast, fore and back sights*, * * * terminating on a rocky hill, * * * at which place the compass was set by the surveyor, and for the purpose of squaring the survey a line was run at right angles with the last line, the line being run in the

direction south southwest a quarter southwest and north northeast, fore and back sights, * * * and returning to the center of the measurement of this head line in the direction opposite of north northwest a quarter northwest and south southeast a quarter southeast. * * *

If we compare this translation (Appendix I) with the translation in the record (R., 73-76) we shall find :

HOPKINS: *East north EAST a quarter EAST and west south west a quarter west, fore and back sights.*

RECORD: *East north WEST a quarter WEST and west south west a quarter west.*

HOPKINS: *North west a quarter north north west and south east a quarter south south EAST, fore and back sights.*

RECORD: *North west a quarter north north west and east a quarter south south WEST.*

HOPKINS: *South south west a quarter south WEST and north north EAST a quarter north EAST, fore and back sights.*

RECORD: *South south west a quarter south EAST and north north WEST a quarter north WEST.*

HOPKINS: *West south SOUTH WEST and east north EAST, fore and back sights.*

RECORD: *West south EAST and east north WEST.*

HOPKINS: *South south west a quarter south WEST and north north EAST a quarter north EAST, fore and back sights.*

RECORD: *South south west a quarter south EAST and north north WEST a quarter north WEST.*

HOPKINS: *North north west a quarter north west and south south EAST a quarter south east.*

RECORD: *North north west a quarter north west and south south WEST a quarter south east.*

This comparison shows conclusively that Mr. Hopkins changed the courses of the original so as to make them possible and made no explanation of the fact. Is it any wonder the surveyor-general found no difficulty in considering these calls of this claim? The courses correctly translated as they appear in the original are NOT intelligible:

The words "fore and back sights" occur five times in this translation, while they do not occur at all in the original Spanish, nor are there any words there that could be so translated.

The "*central point of the survey*" was not the "*ciénega of Babocómari*," but a point "*in front of it*" (R., 75.); in what direction or how far away is not stated, nor is there anything in all the *expediente* to assist in determining the place where the starting point is located.

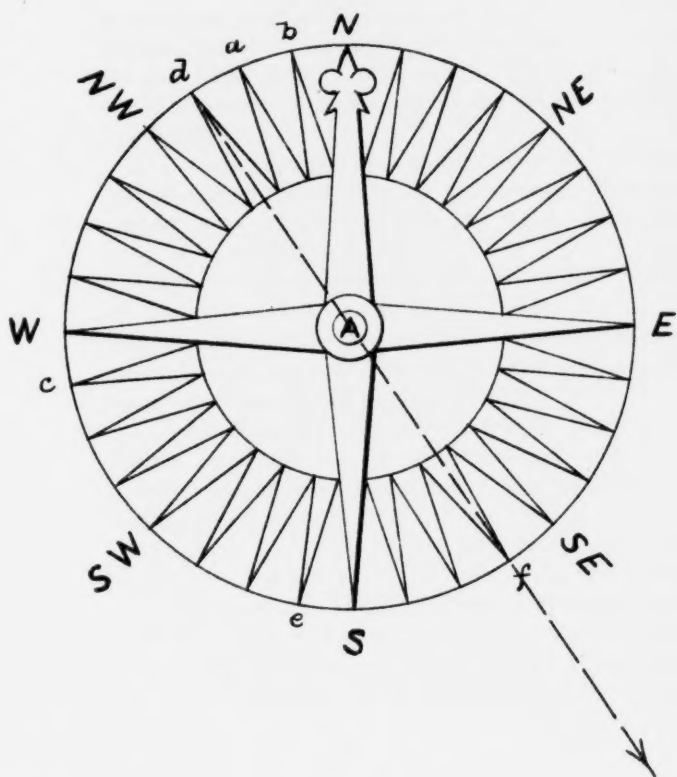
I do not think Mr. Flipper was misled by any inexcusable translation by Mr. Hopkins, but understood exactly what he was saying, and I will undertake to demonstrate the fact.

Analyzing the courses in this testimonio, it says (R., 73, line 24), "*at said place*," etc., that is, at San Pedro, which is twenty-five miles southeast from Babocómari. It is to be observed that no center or starting point is described or mentioned, except "*at said place*," until we reach R., 75, line 7, where it is described as "*the cen-*

A



"A"



ter monument * * * in front of the cienega of San Ignacio Baboçmari." The center is not described as being AT the cienega or NEAR it, but "in front of" it. (R., 75). How far was it from this cienega and in what direction? Only Hopkins and Roskruge seem to have been able to answer this question.

The first course, "*east northwest quarter east to the west southwest quarter west*" (R., 73, line 48), in Spanish, "*Este Norueste cuarto al Este para veste Surueste cuarto al oeste*" (R., 64, line 25), is an impossible course. The first half of it means that the point is one quarter east of "*east northwest*," wherever that may be. To go from "*east*" to "*northwest*" it is necessary to pass the "*north*" cardinal point of the compass. We might suppose "*east northwest*" to be at *a* on the accompanying figure "A;" then "*east northwest quarter east*" would be at *b*. The second half of this course means that the point is one quarter "*west*" from "*west southwest*," that is at *c*. Now, we have the starting point where the instrument stands, or the center of the instrument marked *A*, "*east northwest quarter east*," marked *b*, and "*west southwest quarter west*," marked *c*, three points at the vertices of a triangle through which the surveyor says he ran a single straight line, one hundred cords long. Is it not a manifest absurdity? It is utterly impossible to tell in what direction he actually ran the line, and "*a small valley near some bald hills*" is a very indefinite description, for on this same line there were other "*valleys*" and "*hills*" which, however, are here translated "*hillocks*" from the same word, "*lomas*," the line itself terminating "*at the*

foot of a bald hill (*loma pelona*)," three hundred cords or three leagues from the first-mentioned "bald hills (*lomas pelonas*)."

What can be meant by "a hillock (*loma*) which looks south-southwest?" It is possible for a person to look "south-southwest" or in any other direction from any hill. Moreover, the description calls this line "the side of the three sitios for cattle." It was in fact not the "side" but the center line, and was equivalent in length to the "side" of four sitios, being four hundred cords or four leagues long. At the termination of this line it is said: "I ordered a corner monument placed." It was not a CORNER MONUMENT but a LINE MONUMENT in one side of the grant—the end side.

The "skillful surveyor" is now at this line monument, wherever it may be, and he undertakes to run the end line perpendicular to the other line he had just run and described, that is, "northwest quarter north-northwest to the southeast quarter south-southwest" (R., 74, line 47), in Spanish, "Norueste cuarto al Nornorueste para Sureste cuarto al Sursurueste" (R., 65, line 24). "Northwest quarter north-northwest" is at the point marked *d*. To go from "southeast" to "south-southwest" necessitates passing the "south" cardinal point of the compass, and makes this course indefinite and uncertain, though it is not difficult to guess at what was meant. The other part of this end line, forty cords long, was estimated "in the opposite direction, south-southwest quarter southeast to the north-northwest quarter northwest" (R., 74, last line), to "a hill-ock (*loma*), in Spanish, "Sursurueste cuarto al Sueste

para el Nornorueste cuarto at Norueste" (R., 65, lines 28-31). First, it is plain that the line of sixty cords was estimated TOWARD the Santa Rita mountains. The Babocómari grant as claimed lies nearly due east of those mountains. The sixty-cord line being run TOWARD the Santa Ritas, was run WESTERLY. The forty-cord line "*in the opposite direction*" must have been run EASTERLY, yet this wonderful "*skillful surveyor*" says he ran it "*to the north-northwest quarter northwest.*"

To analyze this course, "*south-southwest quarter south-east*" means undoubtedly a quarter from "*south-southwest*" towards "*southeast*;" that is, at the point marked *e*, though the notation is not correct. "*North-northwest quarter northwest*" is the point marked *d*. Here again we have three points, the vertices of a triangle, through which to run a single straight line, the points being *A*, *d*, and *e*. The sixty-cord line ran from *D* to *f*. The forty-cord line "*in the opposite direction*" from the same starting point should have run from *f* to *d* and not from *e* through *A* to *d*, which is impossible.

This completed the center line to one end line from the starting point and that end line itself. One-fourth of the first or center line, or one hundred cords, was run October 5, 1828 (R., 73, line 43), and the other three-fourths, or three hundred cords, and the end line of one hundred cords were run on the 21st of the same month and year, although the *expediente* also says the latter were "*surveyed the day before*" (R., 75, line 5).

On the same 21st day of October, 1828, the surveyor and his party returned "*to the center monument * * * in*

front of the *cienea* of San Ignacio Babocómari" and ran "west-southeast to east-northwest" (R., 75, line 10), in Spanish, "*Ueste Sueste para Este Norueste*" (R., 65, line 41), which "terminated upon some hillocks (*lomas*) near the *punta de agua*" (R., 75, lines 10, 11, and 12), and continued the line twenty-six cords farther and then three hundred farther to the end line, where he built a monument he calls a corner. It was not a CORNER, but a monument in the END line.

It is absolutely impossible to tell or even to guess what this course means. "West-southeast" means somewhere between "west" and "southeast," somewhere in a range of one hundred and thirty-five degrees at the "south" end of the needle. Likewise, "east-northwest" means somewhere between "east" and "northwest," somewhere in a range of one hundred and thirty-five degrees at the "north" end of the needle. It is therefore impossible to determine in what direction this line was run from the starting point "in front of the *cienea* of San Ignacio Babocómari." (R., 75.)

Being at the termination of this line last run and described, wherever that termination was, the "skillful surveyor" set up his instrument and ran forty cords at right angles to the foregoing line (R., 75, line 47), "south-southwest quarter southeast to the north-northwest quarter northwest," in Spanish "*Sur-surueste cuarto al Sueste para el Nornorueste cuarto al Norueste*" (R., 66, line 37.) "South-southwest quarter southeast" is found at e, although the notation is incorrect. It should be "quarter southrest," but it is fair to presume that that was what was meant.

"North-northwest quarter northwest" is at *d*. Here again we have three points at the vertices of a triangle, *c*, *A*, and *d*, through which to pass a single straight line, a manifest impossibility.

From this same end-line monument the surveyor ran sixty cords in the "opposite direction," "north-northwest quarter northwest to the south-southwest quarter southeast" (R., 76, line 1), in Spanish "*Nornorueste cuarto al Norueste para el Sursurueste cuarto al Sueste*" (R., 66, line 45.) This course is exactly the opposite of the preceding one as described, and runs from *d* to *A* and to *c*, although the notation is again incorrect, in that "quarter southeast" was intended to be "quarter southwest." It is equally absurd, because a single straight line, a course, can not run through three points at the vertices of a triangle.

Owing to the statement made by counsel in his original brief (p. 66) as to the testimony of Mr. Flipper in relation to the *expediente* being on stamped paper, I instructed Mr. Will. M. Tipton, special agent of the Department of Justice, to examine the same during his visit to Hermosillo last February, and the result of his examination is contained in his report, attached to this brief as Appendix II.

Although it appears that various leaves of this paper have been indorsed several times for that purpose, none of these indorsements were signed by the official authorized to habilitate the same, and hence the *expediente* was not on properly stamped paper.

Mr. Flipper nowhere stated in his testimony "that the proceedings in Elias's grant were not on stamped

paper," and he is nowhere contradicted. He did, however, state positively that they were on stamped paper (R., 49), as follows:

Q. Now, as to the construction of the instrument at Hermosillo, describe the kind of paper it is on; also the dates; whether stamped paper; and if so, of what dates.

A. I can read from my notes?

Q. You may use them to refresh your memory.

A. First and second sheets of paper, two reales, for the years 1822 and 1823, seal third. The third and fourth pages are on Mexican paper, seal fourth, for the years 1824 and 1825. Fifth and sixth sheets on paper of Fernando VII, for the years 1811 and 1812. The seventh sheet on Mexican paper, fourth seal, for the years 1824 and 1825. Eighth, ninth, tenth, and eleventh sheets and twelfth sheet on paper of Fernando VII, fourth seal, for the years 1811 and 1812. Thirteenth sheet, Mexican paper, fourth seal, for the years 1824 and 1825. Fourteenth sheet on Fernando VII paper, for the years 1811 and 1812. Fifteenth, sixteenth, seventeenth, and eighteenth sheets on Mexican paper of the fourth seal, and nineteenth sheet on Mexican paper of the fourth seal, for 1829 and 1830. That is all the paper that was used.

The testimony of Mr. Flipper shows that those proceedings were on stamped paper, of dates from 1811 to 1830, and that fourteen sheets of that paper, of dates from 1811 to 1825, *had never been habilitated*—that is, made good for the years 1827, 1828, and 1829, in which they were used—and that five sheets were paper of the proper years and needed no habilitation, notwithstanding

the telegram of the treasurer-general of Sonora, Mr. Victor Aguilar. (R., 80 and 81.)

Counsel in his brief (p. 67) has made, as I think, an unjustifiable attack upon Mr. Flipper and his work, and has sought to put words into his mouth which he never uttered. He was probably misled by following Mr. Hopkins' letter and his translation, as well as his opinion as a lawyer contained in the "Public Domain." There were no "*reverse lines*" or "*back sights*" in this survey. The surveyor, who was NOT the *Alcalde* Alejandro Franco, but a "*skillful surveyor, citizen Jose Maria Caballero,*" stated NO "*reverse directions of the courses*" in his report. The "*courses taken and recorded by the surveyor*" would NOT "*lead to the landmarks and the monuments if they were followed,*" because it is impossible to determine what those courses were.

Mr. Flipper did NOT mean by saying that "*some of the calls are impossible*" that "*some of the reverse courses, backsightings, are in directions that are tangent to the courses as they are stated in the field notes,*" because it is impossible to know what those courses were, therefore impossible to know whether they were "*tangents*" or not, and there absolutely were NO "*reverse courses*" or "*backsightings,*" except in the imagination of Mr. Hopkins, who is not a surveyor and not familiar with the technical terms of surveying. "*Reverse courses*" and "*backsightings*" existed only in his imagination and nowhere in the *expediente*.

"*Courses*" are right lines and it is not conceivable how they can have "*tangents.*" I am forced to believe that counsel is much better lawyer than mathematician,

although he has been led off on a "tangent" by Mr. Hopkins (according to his understanding of the term). The figure (between pp. 6 and 7 of appellant's brief) agrees with the courses as translated by Mr. Hopkins, but I do not believe that anyone is likely to conclude that Mr. Hopkins's translation can be relied upon, and it is evident that he is responsible for the mistake of the surveyor-general in recommending the grant for confirmation by congress, by making an incorrect translation of the *testimonio*.

Mr. Roskrige, who attempted to resurvey this grant with the *testimonio* before him, states (R., 37) that the original surveyors never measured an inch of the tract, and I am inclined to think that he was correct, as I have been of the opinion that such was the case in nearly all of these grants.

The area claimed in the petition filed in the court below is one hundred and twenty-eight thousand acres, which are equal to twenty-nine and one-half *sitios*, although only eight *sitios* were attempted to be granted, which equal thirty-four thousand seven hundred and seven and sixty-eight one-hundredth acres. Under the state law of May 20, 1825, article 21 (Reynolds, 130), each new breeder was limited to FOUR *sitios*, and it is now contended that this grant was lawfully and regularly made for *twenty-nine and one-half sitios*. No attempt was made to locate the eight *sitios* within the outboundaries of the grant. By following the description contained in the *testimonio*, without arbitrarily disregarding the field-notes therein, the grant can not be located, and is impos-

sible of location if any integrity is to be ascribed to the recitals contained in the instrument.

The discussion herein had, I submit, fully sustains the fourth and fifth grounds upon which the grant should be rejected, as stated at the commencement of this brief.

I respectfully submit that the judgment of the court below should be affirmed.

JOHN K. RICHARDS,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.



APPENDIX I.

COPY OF TRANSLATION OF ORIGINAL TITLE PAPERS.

Title of grant of eight square leagues of land for the raising of stock, including the place named San Ignacio del Babacomori, in the jurisdiction of the presidio of Santa Cruz, issued by the treasurer-general of Sonora, in favor of the citizen Ignacco Elias and Dona Eulalia Elias, the first a resident of Rayon and the second of Arizpe.

For the year 1831 and 1832.

Second seal, 12 reales. [L. S.]

José Maria Mendoza, treasurer-general of the state of Sonora (free, sovereign, and independent).

Whereas, Article 11 of the sovereign decree number 70 of the general congress of the union, dated the 4th of August, 1824, concedes to the state the revenues which in said law are not reserved by the federal government, and one of these being the lands of the respective districts to which they belong, for the concession of which laws the honorable constituent congress of the state of Sonora and Sinaloa united, passed the law of the 20th of May, 1825, No. 30, and the successive legislatures passed other laws and decrees in relation to the matter, and the citizens Ignacco and Eulalia Elias having made formal denouncement before this treasurer's office of the lands named, San Ignacio del Babacomori, situated in the jurisdiction of the presidio of Santa Cruz, the said petitioners being the first, a citizen of the villa of Rayon,

and the second of this capital; the said denouncement was admitted according to law on the 1st of July, 1827, and the writing of denouncement and other proceedings in relation thereto are as follows:

To the treasurer-general.

We, Ignaceo Elias and Eulalia Elias, present ourselves before your honor, respectfully representing: That, needing a tract of land for our stock, we denounce, in company with Don Rafael Elias, captain Ignaceo Elias, and Don Nepomucino Feliz, the vacant tract of land adjoining the rancho of San Ignaceo del Babacomori, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place of Tres Alamos, obligating ourselves to pay to the nation the corresponding tax, with all other matters that justice may require until the title and confirmation thereof shall be obtained. Wherefore, your honor will be pleased to consider the vacant tract referred to, petitioned for, wherefore we pray your honor to be pleased to order as we have prayed for, in which we will receive favor. Arizpe, March 12, 1827. In the absence of, and at the request of, Don Ignaceo Elias, and Joaquin Elias, Eulalia Elias. Cosala, July 1, 1827. The alcalde of Santa Cruz will proceed in the matter under the authority which is conferred on him, without prejudice to a third party who may have a better right, first citing the colindantes to the measurement, valuation, and publication for thirty days consecutively of the lands referred to in the denouncement, subject to the sovereign decree of the hon. constituent congress of the state, Number 30 of the 20th of May, 1825, and to the regulations accompanying the same, and when these proceedings shall have been taken let the same be transmitted to this treasurer's office, notifying the bidders to appear personally, or by their agents, at the sale to be made at said office after the required publication.

The treasurer-general of the state, Nicholas Maria Gajiola, thus be decreed and signed. Gajiola.

At the presidio of Santa Cruz, on the 5th day of the month of October, 1828. In view of the foregoing decree of the señor treasurer-general, let the same be complied with; wherefore for this purpose, with the citation of the interested party, the colindantes, the surveyor, and the necessary officers, which are to be named, I shall proceed to the hacienda of San Pedro for the purpose of measuring the lands petitioned for. The citizen Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, by this act, thus determined and signed, with the assisting witnesses, with whom I act ex officio, in the absence of a notary public, according to law. For Alejandro Franco, Ramon Romero, assistant; Ramon Romero, assistant, Franco Guana.

Wherefore the alcalde surveyor, after summoning the colindantes, proceeded to the appointment of counters, measurers, and markers, who were the citizens Lorenzo Sortellon, Andrez Mentoya, Pablo Elias, Antonio Campoy, and Monico Nerea, who accepted the appointments and made oath that they would discharge their several duties faithfully and legally; whereupon the measurements were made as follows:

At the same place, and on the same day, month, and year, for the purpose of proceeding with the measurement required, the interested party, the officers appointed, and the assisting witnesses being present, I ordered to be measured a cord of fifty veras, the ends of which were attached to lances, whereupon the surveyor proceeded to the measurement of the lands in question, the surveyor being the citizen José Maria Caballero, who, after setting his compass, took the direction east, northeast a quarter east and west, southwest a quarter west, fore and back sights, where a cross was placed as a landmark, and from said point there were measured and counted one hundred cordeles, the line terminating in a little valley, close to some bald hills, where I ordered a monument to be

placed; whereupon, it being late, I ordered the cord to be gathered up and that all parties return to rest until the day following, making this entry in the proceedings, which I sign with the assisting witnesses and the interested parties, who accompany me, to which I attest. For Alejandro Franco, Ramon Romero, Ignaceo Elias, Juan Nepomucino Feliz, Ignaceo Elias Gonzalez, José de Caballero, Lorenzo de Sortellon, for Antonio Campoya, Maunico Neero, Francisco Guano for Andrex Mentoya, and for me, Pablo Elias, assistant, Ramon Romero, assistant Francisco Guana.

At the place at which the second landmark was ordered to be placed, named valley of San Ignaceo del Babacomori, in company with the interested party, the surveyor, and the officers appointed for the purpose of continuing the measurement in the same direction, and on the 21st day of the same month and year, I caused the cord to be examined anew, and after the same had been examined, the extremities thereof were attached to lances, whereupon there were measured and counted in the same direction two hundred and fifty-three cords, the line terminating on the summit of a hill, which was now toward the south-southwest, at which point the measurement was suspended on account of the roughness of the country and the many and deep canadas encountered in the measurement, wherefore it was necessary for me and the surveyor to make an estimate of fifty-seven cords more for the purpose of completing the side of these square leagues, this estimate terminating at the hot spring in front of the Sierra of Santa Rita, at the foot of a bald hill, where I ordered a corner monument to be placed, which gives a view of the said sierra and the hot spring referred to; and from this point, the rough character of the country continuing, in order to run the head line of the survey and squaring the tract surveyed, the surveyor and myself estimated northwest a quarter north-north-

west and southeast a quarter south-southeast, fore and back sights, sixty cords as far as a cottonwood standing in a little valley at the foot of the said Sierra of Santa Rita; and for the completion of the headline in the opposite direction of south-southwest a quarter southwest and north-northeast a quarter northeast, fore and back sights, we estimated forty cords, which terminated on a hill on which there are some live oaks, at which point I ordered the corresponding monument to be placed, whereupon with these three square leagues and the measurement of the preceding day, the measurement of four square leagues was completed; and it being past midday, we returned to the central monument, as we had arrived in front of the monument of the Cienega del Babacomori; after causing the cord to be again examined, the extremities of which were attached to lances, the line was run west south-southwest and east northeast, fore and back sights, and there were measured and counted seventy-four cords, the line terminating on the summit of some hills close to the punta del la Agua, at which point, it being late, the measurements were concluded for the day, whereupon the party returned to rest; whereupon I made this entry in the proceedings, signing with the interested party, the surveyor, the officers appointed, and the assisting witnesses, to which I attest, for Alejandro Franco, Ramon Romero, Ignacio Elias, Juan Nepomucino Feliz, Lorenzo Sortellon; for Andres Mentoya and for me, Pablo Elias; for Antonio Campoya and Mariano Neero, Francisco Guana, Ignacio Elias Gonzales, José de Caballero; assistant Ramon Romero, assistant Franco Guana.

At the said place, on the 22d day of the same month and year, I, the judge commissioner, the interested party, the surveyor, and the other officers appointed, I caused the cord of fifty varas to be again examined and the course of the proceeding day, whereupon the same course there was measured and counted twenty-six cords for the purpose

of completing the one hundred cords for the side of one square league, and in the same direction, the line passing over several hills and canadas, and there were measured and counted three hundred cords, the last of which passed over a valley close to the Tanques of Ojo del Agua, terminating on a rocky hill, where I ordered a monument to be placed as a corner, which completed the side of the other four square leagues, at which place the compass was set by the surveyor, and for the purpose of squaring the survey a line was run at right angles with the last line, the line being run in the direction south-southwest a quarter southwest, and north-northeast a quarter northeast, fore and back sights; and there were measured and counted forty cords corresponding to the foregoing headline of the other four square leagues, the line terminating on some bald hills, where I ordered a landmark to be placed as a corner, and returning to the center of the measurement of this headline in the direction opposite of north-northwest a quarter northwest and south-southeast a quarter southeast there were measured and counted sixty cords for the purpose of completing the one hundred cords, the line terminating on the summit of a high hill; whereupon the measurements were concluded of the eight square leagues petitioned for by Don Ignacio Elias and his sister Da. Eulalia Elias, and with which they were satisfied, they being informed that in due time they were to mark the boundaries of the tract by placing their monuments of lime and rough stones as required by law. In witness whereof he signed with me, and all those who knew how to write, together with the assisting witnesses with whom I had in the absence of a notary public, according to law. For Alejandro Franco—Ramon Romero, Ignacio Elias, Lorenzo Sortellon; for Andrez Mentoya and for me, Pablo Elias; for Antonio Campoya and Mariano Negro—Francisco Gama, Juan Nepomucino Feliz, Ignacio Elias Gonzales, José de Caballero, assistant Ramon Romero, assistant Francisco Gama.

Whereupon the alcalde proceeded to the corresponding valuation of the land, appointing intelligent experts for that purpose, who were the citizens Pablo Elias and Ramon Romero, who made the valuation to the best of their practical knowledge, after taking the necessary oath, and in accordance with the regulations in relation thereto. They valued in the land in the sum of three hundred and eighty dollars, for the reason the six square leagues of the tract contained running water; this they valued at sixty dollars the square league, and two square leagues thereof being arid, they valued at ten dollars the square league of this valuation. The alcalde offered the tract for sale, publishing the same for thirty consecutive days, writing purchasers to act from the 30th of October, 1828, until the 28th day of November of the same year, and, no purchasers appearing, the expediente was concluded, and on the 30th of November the same was sent to the treasurer's office for the necessary proceedings thereon until the sale, whereupon, with the decree of the 19th of December, the same was referred to the attorney-general for his report, whose report is as follows:

To the treasurer-general:

This expediente contains the measurement of eight square leagues of land, made by the alcalde of Santa Cruz, in the places of San Ignacio del Babacomori. I find nothing in the proceedings to prevent the adjudication of the land to the petitioners, if it is not that the quantity exceeds that mentioned in article 21 of the decree of the 20th of May, 1825. If your honor is satisfied as to this, I am of the opinion that the land may be sold to the denouncer, if there should be one willing to pay a higher price therefor. Alamos, December 20, 1828. Felipe Gil.

And the treasurer-general having been satisfied with the report of the attorney-general, the three public almonedas of the 22d, 23d, and 24th were made writing purchasers, and, none having come forward, the eight square leagues

of land in the place of San Ignacio del Babacomori were sold to the citizen Ignacio Elias and Da. Eulalia Elias, as is shown by the third almoneda, which is as follows:

Third almoneda.

In the said city of Concepcion, on the 24th day of the same month and year, at a meeting of the president and members of the said Junta de Almonedas, the third almoneda was ordered of the said lands, which was made in the same way as the foregoing, with the sole difference that it is stated at this time the land was to be peremptorily sold, and, the hour of noon having arrived without any purchasers appearing, the auctioneer proclaimed in a loud voice, "*Once, twice, three times; going, going, gone*—sold to Don Ignacio and Dona Eulalia Elias"—in which terms said act was concluded, and the land was publicly and solemnly sold to the interested parties for the sum of three hundred and eighty dollars, at which the tract was valued. In witness whereof, this entry was made in the proceedings, the same being signed by the senores president and members of the junta with the citizen Ignacio Elias, as agent of the interested parties, Gajiola Almada Gil, Ignacio Eleas Gonzales.

Whereupon the agent, captain Ignacio Eleas Gonzales, proceeded to deposit in the treasurer's office three hundred and eighty dollars, at which the said tract of land was valued and sold, as is shown by the following certificate:

Nicolas Maria Gajiola, treasurer-general of the state of the West, certifies that on folio 3 (reverse) of the manual of the treasury of the current year there is found the following entry, charged to grants of land, three hundred and eighty dollars, which was paid by captain Don Ignacio Elias Gonzales, in the name of Don Ignacio and Da. Eulalia Eleas, residents of Arizpe, for a grant of eight square leagues of land at the place named

San Ignaceo del Babacomori, in the jurisdiction of the presidio of Santa Cruz, valued at the sum stated, for which it was sold to the grantees without any opposition whatever in the Junta de Almonedas, collected on the 24th day of December last passed, three hundred and eighty dollars. Gajiola, Ignaceo Eleas Gonzales.

In witness whereof, I give this in Alamos, on the 8th day of January, 1829. Nicolas Maria Gajiola.

The foregoing certificate being added to the original expediente, in addition to the matter, the expediente was concluded with the necessary formalities, the same remaining in the article as a perpetual testimony.

Wherefore, in the exercise of the authority conceded to me by law, by these presents, and in the name of the free and sovereign state of Sonora, I grant in due form of law eight square leagues of land, comprising the place named San Ignaceo del Babacomori, situated in the jurisdiction of the presidio of Santa Cruz, in favor of the citizens Ignaceo Elias and Dona Eulalia Elias, to whom I concede said lands, as a sale, and with the quality and firmness established by law, for himself, his children, heirs, and successors, with all of its uses, customs, servitudes, woods, pastures, waters, watering places, and all other things thereto pertaining, under the positive condition that they have to keep the said tract of land occupied, the same not to be abandoned for any time whatever, and that if the same should be abandoned totally for the space of three years consecutively, and there should be someone else who should denounce the said land, in such event, if the land should be declared vacant, it may be adjudicated to the highest bidder, excepting always the cases in which abandonment is caused by a notorious invasion of enemies, and only for the period of such invasion, requiring, as I strictly require, that the said citizens Ignaceo Elias and Dona Eulalia Elias, and their heirs, that the grantees are to subject themselves to the

limits and boundaries of the land as set out in the proceedings of measurement, observing and giving exact fulfillment to the law No. 30, of the 20th of May, 1825, which imposes the obligation upon the grantees to place upon the boundaries of the land the required monuments, under a penalty of twenty-five dollars, which shall be exacted from them, to be paid into the public treasury; and I order and command the judges and local authorities who are at present in office, or who may hereafter be, in the district of this capital that in the administration of justice, and in compliance with the laws, they shall not permit the interested parties nor their heirs to be molested in the peaceable possession of said land, but that they shall take care that they shall be protected therein, since the same belongs to them by just and legal title, under which they may freely sell, exchange, donate, transfer, cede, and alienate the same at their election, as their own absolute property. In testimony whereof, I issue the present title in favor of the citizens Ignàcio and Dona Eulalia Elias and their successors, for their security, the same being requested in the corresponding book of toma de razon.

Given in the capital of Arizpe, on the 25th day of December 1832, authorized and signed by me and sealed with the seal of this treasurer's office, before the undersigned assisting witnesses in the absence of a notary public, there being none.

[L. s.]

JOSÉ MARIA MENDOZA.

Asst.:

BARTOLA MARANDA.

Asst.:

LOUIS CARRANCO.

This title remains registered on folio 11 of the corresponding book in the office of the treasurer-general.

[Rubrica, Jose Ma. Mendoza.]

Fourth seal 6½ cents (L. s.) for the year 1831 and 1832, No. 762, in as much as the interested parties to whom was sold the lands on the 18th of April and on the 24th day of December 1828, the laws of San Rafael del Valle, San Juan de las Boquillas of Nogales and San Ignaceo del Babacomori, situated in the jurisdiction of the presedio of Santa Cruz; the first to Rafael Elias, the second to Ignaceo Elias Gonzales and Nepomucino Feliz, and the third to Ignaceo Elias and Dona Eulalia Elias, have shown that they have not been guilty of neglect in failing to obtain the original titles for said lands since they have solicited the same from the treasurer's office since before the 10th of July 1830, you shall proceed to issue said titles gratis in conformity with the requirements of decree No. 27 of the 11th of August, 1831. God and Liberty. Arizpe, April 29, 1833. Ignaceo de Bustamente, Lucas Rodriguez.

Officeal 1.

Arizpe, May 8, 1883.

JOSÉ MARIA MENDOZA.

OFFICE OF THE SURVEYOR-GENERAL,

Tucson, Ariz., September 17, 1897.

I hereby certify that the foregoing eleven pages of typewritten matter is a correct copy of the paper it purports to be a transcript of on file in this office, as found in Volume I, pages 154 to 165 inclusive, of the Journal of Private Land Claims for the district of Arizona

[SEAL.]

GEORGE CHRIST,

United States Surveyor-General for Arizona.

APPENDIX II.

SANTA FE, N. MEX., *September 21, 1897.*

Hon. MATT. G. REYNOLDS,
U. S. Attorney, C. P. L. C.

SIR: I made a careful examination of the *expediente* of the San Ignacio del Babocómari grant in the archives at Hermosillo, Sonora, Mexico, on the 16th of February, 1897, in relation to its being on stamped paper, with the following result:

The title leaf is on common unstamped paper.

Leaf 1 is on Spanish paper of the reign of Ferdinand VII, *3rd stamp, 2 reales* [25 cts.], for 1822-1823. It bears printed statements that it had been habilitated three times, the last time by the state of the Occident for 1827 and 1828.

Leaf 2 is the same as leaf 1.

Leaf 3 is on Mexican paper of the *4th stamp, one cuartilla* [*3 1-8 cts.*], for 1824-1825. It bears the printed statement that it was habilitated by the state of the Occident for 1827-1828.

Leaf 4 is the same as leaf 3.

Leaf 5 is on Spanish paper of the reign of Ferdinand VII, *4th stamp, one cuartilla* [*3½ cts.*], for the year 1811 and 1812. It bears printed statements that it had been habilitated four times, the latest time by the state of the Occident for 1827-1828.

Leaf 6 is the same as leaf 5.

Leaf 7 is on Mexican paper, *4th stamp, one cuartilla* [$3\frac{1}{8}$ cts.], for the year 1824-1825. It bears the printed statement that it had been habilitated once by the state of the Occident for 1827-1828.

Leaves 8, 9, and 10 are the same as leaf 5.

Leaves 11 and 12 are on Spanish paper of the reign of Ferdinand VII, *4th stamp, one cuartilla* [$3\frac{1}{8}$ cts.], for 1811-1812, and has been habilitated twice, once for 1816-1817, and once a *4th stamp official* of the republic of Mexico, without date.

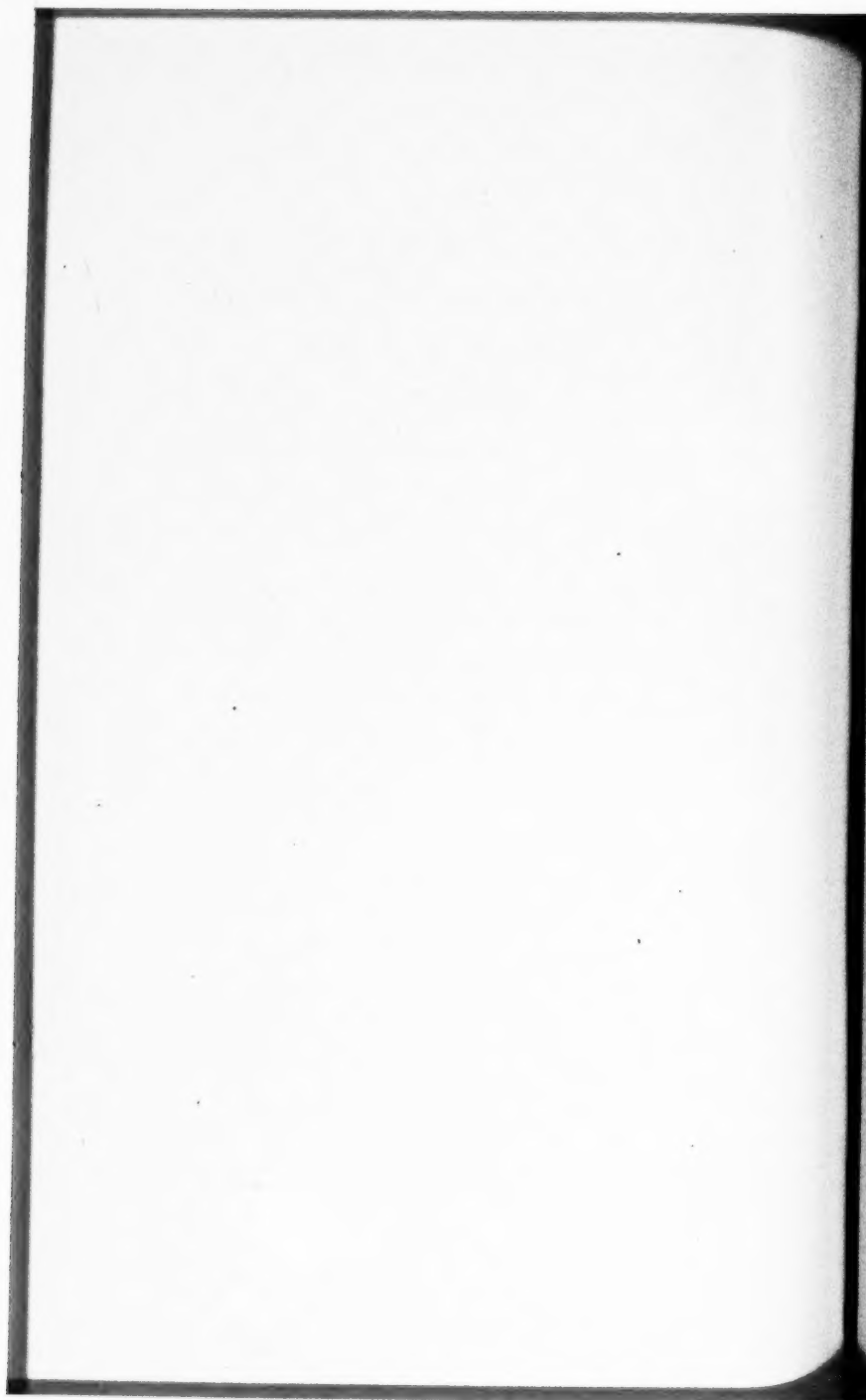
Leaf 13 is on Mexican paper, *4th stamp, one cuartilla* [$3\frac{1}{8}$ cts.], for 1824-1825, and has been habilitated once by the state of the Occident for 1827-1828.

Leaf 14 is the same as leaf 5.

Leaves 15, 16, 17, and 18 are the same as leaf 13.

Leaf 19 is on paper of the *4th stamp, one cuartilla* [$3\frac{1}{8}$ cts.], of the state of the Occident for 1829 and 1830.

WILL. M. TIPTON,
Special Agent, Dept. of Justice.



No. 30.

MAR 24 1898
JAMES H. McKENNEY,
CLERK

Brief of Atty. Gen. (Richards &
Reynolds) for U. S. (by
Filed Mar. 24, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

ROBERT PERRIN, APPELLANT, }
v. } No. 30.
THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.
RABOONARI GRANT IN ARIZONA.

**BRIEF ON BEHALF OF THE UNITED STATES
ON THE TRANSLATION OF ARTICLE VI OF THE GADSDEN
TREATY, SIGNED ON DECEMBER 30, 1853, AND RATIFI-
CATIONS THEREOF EXCHANGED ON JUNE 30, 1854. (U. S.
STAT. L., VOL. 10, PAGE 1061.)**



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TREATY, SIGNED ON DECEMBER 30, 1853, AND RATIFI-
CATIONS THEREOF EXCHANGED ON JUNE 30, 1854. (U. S.
STAT. L., VOL. 10, PAGE 1031.)

Appellant's counsel, as a *dernier ressort*, have assumed a novel attitude as to the proper translation of the sixth article of the Gadsden Treaty, in opposition to which it is deemed prudent to present this brief. On pages 50-51 of the original brief, filed by Byron Waters, esq., in this case, it is stated :

Both the English and Spanish copies of this treaty are originals.

* * * * *

The contradiction or mistranslation occurs in Article VI of the treaty.

* * *

It is apparent that the word "*located*" should have been omitted from the English copy and the word "*inscribed*" used instead.

The contention insisted upon by counsel is that the Supreme Court of the United States, the constitutional head of one of the coordinate branches of the Government, shall eliminate from this treaty the word "*located*," contained in the English version thereof—the express stipulation of the treaty-making power, composed of the heads of the other two coordinate branches of the Government—and substitute therefor the word "*inscribed*." The novelty of such a proposition will at once attract attention.

The reformation of a treaty which this Government has entered into with another Government is an attribute of a power belonging exclusively to its political branch, and can not be constitutionally delegated to the judicial branch. The most that can be said of the power of the judicial branch of this Government in respect thereof is that in interpreting its provisions as the law of the land, where any inconsistencies may appear between the two versions of such a treaty, it becomes its duty to consistently reconcile and harmonize them, if possible. Counsel in this case are evidently seeking to render such a reconciliation impossible. It shall be the purpose of the Government's counsel to reconcile both versions thereof and to demonstrate that there is in fact no inconsistency, contradiction, or repugnance between the terms used in each version.

The sixth article of the Gadsden Treaty must be intended to stipulate expressly the agreement of the parties, and, as said by Chief Justice Marshall in the case of *United States v. Percheman* (7 Peters, 51-87), in discussing the eighth article of the treaty with Spain of 1819—

If the English and the Spanish parts can, without violence, be made to agree, that construction which establishes this conformity ought to prevail.

Referring to the eighth article of that treaty, the same jurist said, "this article is apparently introduced on the part of Spain," etc. (*Ibid.*, p. 87.)

The sixth article of the Gadsden Treaty is apparently introduced on the part of the United States, and hence it would naturally follow that the Spanish version was originally translated from the English, and that the word "*located*" was translated by its Spanish equivalent "*inscritas*." The poverty of the Spanish language has often been the subject of observation and comment by translators.

It is also contended by counsel, on page 50 of his brief, before referred to, that to Mr. Luis Mendez and Y. Sepulveda "belongs the credit of first calling attention to the patent and most important contradiction which exists between the English and Spanish copies of the treaty mentioned." In this he is evidently mistaken. It will be found that on June 21, 1881, this matter was called to the attention of Mr. Guillermo H. Robinson in the El Soporí Case, in Arizona, in the investigation made at that time by Surveyor-General John Wasson (see Senate Ex. Doc. No. 93, Forty-eighth Congress, first session, page 75), and Mr. Robinson, who is an eminent

Mexican lawyer and has held important judicial positions, both Federal and State, in Sonora, Mexico, testified as follows:

Question. Please state what the Spanish words occurring in the Gadsden Treaty as follows, viz, "*inscritas y debidamente registradas en los archivos*," signify in legal practice and procedure in Mexico.

Answer. "*Inscritas y debidamente registradas en los archivos*" have been properly translated "*located and duly recorded in the archives.*"

While the competency or reliability of any of the experts consulted by counsel for appellants as to the proper translation of the sixth article of this treaty is not questioned, yet it is very much doubted whether the entire question has been submitted to them, so as to enable them to determine whether it is fairly possible to harmonize both versions of the treaty, retaining every word in full force in each without doing violence to either. This question has been submitted to Mr. Henry O. Flipper, special agent of the Department of Justice, and expert, with that object in mind, and his report thereon is herewith respectfully submitted.

JOHN K. RICHARDS,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.

Hon. MATT. G. REYNOLDS,
Special Assistant to the Attorney-General.

SIR: I have the honor to submit the following report of my investigation as to the supposed conflict and inconsistency in the two versions of the sixth article of the Gadsden Treaty, and especially of the two clauses "*located and duly recorded*," and "*inscritas y debidamente registradas*," and more particularly the equivalency of the words "*located*" in the English version and "*inscritas*" in the Spanish version, so as to retain the word "*located*" in the English version and the word "*inscritas*" in the Spanish version, and whether these words may be retained in both versions without doing violence to either, instead of striking out of the English version the word "*located*" and substituting therefor the word "*inscribed*" as the proper equivalent of the word "*inscritas*."

The two versions of the treaty are as follows:

“ARTICULO VI.

“No se considerarán válidas, ni se reconocerán por los Estados Unidos ningunas concesiones de tierras en el territorio cedido por el artículo primero de este tratado, de fecha subsecuente al día veinte y cinco de Septiembre en que el ministro y signatario de este tratado por parte de los Estados Unidos propuso al Gobierno de México dirimir la cuestion de límites; ni tampoco se respetarán, ni considerarán como obligatorias ningunas concesiones hechas con anterioridad que no hayan sido inscritas y debidamente registradas en los archivos de México.

“ARTICLE VI.

“No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the

day—twenty-fifth of September—when the minister and subscriber to this treaty on the part of the United States proposed to the Government of Mexico to terminate the question of boundary will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico. (U. S. Stat. L., Vol. X, 1035.)

The Spanish word "*inscritas*" is the irregular past participle of the verb "*inscribir*." It is plural in number and feminine in gender, and qualifies the word "*concesiones*," which here means grants.

Grammar of the Royal Academy of Spain, Paris, 1882, page 137.

Grammar of the Royal Academy of Spain, Madrid, 1894, page 174.

Grammars of the Spanish Language, Velazquez, New York, 1849, p. 455; Robertson, New York, 1861, p. 125; De Tornos, New York, 1867, p. 274; New Dictionary of the Castillian Language by a Society of Literati, Paris, 1860.

The orthography of the word as here given is modern. It so appears in the Grammar of Velazquez published in 1849, while in the Dictionary of Salvá, published in 1845, it is given "*inscripto*," thus following the original Latin "*inscriptus*."

As to the meaning of the word, I copy in full the following definitions of "*inscribir*," as given in the dictionaries herein enumerated:

I

Dictionary of the Royal Academy of Spain, old edition, without date, probably 1780:

"Inscribir: v. a. Escribir, ó grabar letras, ú otra cosa en parte pública, para perpetuar la noticia de algun suceso.

"Inscribir: Geom. Formar una figura dentro de otra, de suerte que todos los ángulos de la inscripta toquen á los lados de aquella en que se inscribe."

[Translation.]

"Inscribir: verb active. To write, or to engrave letters, or other things, in a public place, to perpetuate knowledge of some event.

"Inscribir: Geometry. To form one figure within another, so that all the angles of the one inscribed will touch the sides of that in which it is inscribed."

II.

Dictionary of the Castillian Language by Terreros y Pando, Madrid, 1787:

"Inscribir, en la Jeometria, se toma por hacer un triángulo, ó polígono, dentro de un círculo, de modo que todos los ángulos toquen en el perímetro.

"Inscribir, gravar, esculpir."

[Translation.]

"Inscribir, in geometry, is understood to mean to make a triangle, or polygon, within a circle, so that all the angles will touch the perimeter.

"Inscribir, to engrave, to carve."

III.

New Dictionary of the Castillian language, by Salvá, Paris, 1845:

"Inscribir. a. Grabar letreros en metal, ó en piedra, para conservar la memoria de algun sugeto ó de algun hecho memorable. Geom. Formar una figura dentro de otra, de suerte que todos los vertices de los ángulos de la inscripta lleguen á la periferia de aquella en que se inscribe. (r. neol. Alistarse por escribirse en alguna lista)."

[Translation.]

"Inscribir. active. To engrave letters in metal or stone, to preserve the memory of some individual or of

some memorable deed. *Geometry*: To form one figure within another so that all the vertices of the angles of the one inscribed will reach the periphery of the one in which it is inscribed. (reflexive. neologism. To enlist by signing some list)."

IV.

English-Spanish and Spanish-English Dictionary, Velazquez, New York, 1852:

"Inscribir. v. a. 1.—To inscribe, to mark with writing. 2.—(Geom.) To inscribe, to draw a figure within another."

V.

New Dictionary of the Castillian Language, by a Society of Literati, Paris, 1860:

"Inscribir. a. Grabar ó esculpir letreros en metal, piedra, etc. Geom. Formar ó trazar una figura dentro de otra, de suerte que todos los ángulos de la primera toquen en el periferio de la segunda. Si la figura fuese curva, deberá tener puntos de contacto con todos los lados ó planos de la circunscrita. Incluir en lista; sentar el nombre de uno entre los de otras personas, con un fin dado. Fig. Consignar por escrito."

[Translation.]

"Inscribir, active. To engrave or carve letters in metal, stone, etc. *Geometry*. To form or trace one figure within another, so that all the angles of the first will touch the periphery of the second. If the figure inscribed should be a curved one, it must have points of contact with all the sides or planes of the one circumscribed. To include in a list; to enter one's name among those of other persons for a given purpose. Figuratively, to set down in writing."

VI.

Latin-Spanish and Spanish-Latin Dictionary by Lopez.
Paris, 1860:

"Inscribo. Cic. Inserir, escribir ó grabar en ó sobre, poner una inscripción ó un sobreescrito, intitular. Designar."

[Translation.]

"Inscribo, Cicero. To inscribe; to write or engrave in or upon; to put an inscription or superscription; to give a title to; to designate."

VII.

National Dictionary, or Grand Classical Dictionary of the Spanish Language, by Don Ramón Joaquín Domínguez, 11th edition, Madrid, 1869.

"Inscribir, v. a. Grabar ó esculpir letreros en metal, piedra, etc. Geom. Formar ó trazar una figura dentro de otra, de suerte que todos los ángulos de la primera toquen en el periferio de la segunda. Si la figura inscrita fuese curva, deberá tener puntos de contacto con todos los lados ó planos de la circunscrita. Incluir en lista; sentar el nombre de uno entre los de otras personas, con un fin dado. Fig. Consignar por escrito."

[Translation.]

"Inscribir, verb, active. To engrave or carve letters in metal, stone, etc. Geometry: To form or trace one figure within another, so that all the angles of the first will touch the periphery of the second. If the figure inscribed is curved, it must have points of contact with all the sides or planes of the figure circumscribed. To include in a list; to enter one's name among those of other persons, for a given purpose. Figuratively: To set down in writing."

The above is the dictionary cited by counsel in his brief, page 51. It will be observed that it gives a geometrical meaning of the word "*to form or trace one figure within another.*" When a tract of land has been traced out in the great body of the public domain, it has been "*inscrito,*" or, in English, "*located.*" To trace one figure within another is to "*inscribe*" it, so that even the English word "*inscribe*" means to locate.

"*Inscrito*" does not mean "*in writing*;" its primitive meaning is "*carved*" or "*engraved.*" "*In writing*" to be correctly rendered in Spanish must be translated "*escrito.*"

VIII.

General Etimological Dictionary of the Castillian Language, by Roque Barcia, Madrid, 1881:

"*Inscribir. Activo. Grabar letreros en metal ó en piedra, para conservar la memoria de algun sugeto ó algun hecho memorable. Geometria: Formar una figura dentro de otra, de suerte que toque en varios puntos al contorno de esta. Apuntar su nombre entre otros para un objeto determinado. Usase tambien como recíproco.*"

[Translation.]

"*Inscribir. Active. To engrave letters in metal or in stone, to preserve the memory of some individual or of some memorable deed. Geometry: To form one figure within another so that it will touch the perimeter of the latter at various points. To enter one's name among others for some specific purpose. It is also used as a reciprocal.*"

IX.

English-Spanish and Spanish-English Dictionary, Lopez and Bensley, Paris, 1882:

"*Inscribir, a. To inscribe, to mark with writing. Geom. To inscribe, to draw a figure within another.*"

X.

Dictionary of the Castillian Language, by Campano, Paris, 1883:

"Inscribir, a. Grabar letreros en metal ó en piedra para conservar la memoria de alguna persona ó hecho notable. Geogr. Formar una figura dentro de otra. Apuntar su nombre entre otros para un objeto determinado. Se usa tambien como recíproco."

[Translation.]

"Inscribir, active. To engrave letters in metal or in stone to preserve the memory of some person or of some notable deed. Geography. To form one figure within another. To enter one's name among others for a specific purpose. It is also used as a reciprocal."

XI.

Dictionary of the Castillian Language, by the Royal Academy of Spain, 12th and last edition, Madrid, 1884:

"Inscribir (del. lat. *inscribere*), a. Grabar letreros en metal, piedra ú otra materia. Apuntar el nombre de una persona entre los de otras para un objeto determinado. U. t. e. r. For. Extender en los libros de registro de la propiedad los asientos definitivos de los títulos por los que se constituye, traslada ó extingue el dominio de los inmuebles, ó algun derecho real. Geom. Trazar una figura dentro de otra, de modo que, sin cortarse ni confundirse, estén ambas en contacto en varios de los puntos de sus perímetros."

[Translation.]

"Inscribir (from the Latin *inscribere*), active. To engrave letters in metal, stone or other material. To enter the name of a person among those of others for a

specific purpose. Used also as a reciprocal. Law. To spread on the books of the registry of property the formal entries of the titles by which the dominion of immovables or of some right real is constituted, transferred or extinguished. *Geometry*: To trace one figure within another, so that, without their conflicting or being uncertain, both may be in contact at various points of their perimeters."

XII.

Dictionary of the Castilian Language, by Vera y Gonzalez, fifth edition, Madrid, 1890:

"Inscribir, a. Grabar letreros en metal ó en piedra para conservar la memoria de alguna persona ó hecho notable. Geogr. Formar una figura dentro de otra. Apuntar su nombre entre otros para un objeto determinado. Se usa tambien como recíproco."

[Translation.]

"Inscribir, active. To engrave letters in metal or in stone, to preserve the memory of some person or notable deed. Geography. To form one figure within another. To enter one's name among others for a specific purpose. It is also used as a reciprocal."

XIII.

Latest Dictionary of the Castilian Language, by a society of writers, under the direction of Don Carlos de Ochoa, Paris, 1892:

"Inscribir, a. (Lat., *inscribere*.) Grabar ó esculpir letreros en metal, piedra, etc. Geom. Formar ó trazar una figura dentro de otra, de suerte que todos los ángulos de la primera toquen en el perímetro de la segunda. Si la figura inscrita fuese curva, deberá tener puntos de

contacto con todos los lados ó planos de la circunscrita; incluir en lista; sentar el nombre de uno entre los de otras personas, con un fin dado. Fig. Consignar por escrito."

[Translation.]

"Inscribir, active. (Latin, *inscribere*.) To engrave or carve letters in metal, stone, etc. Geometry. To form or trace one figure within another, so that all the angles of the first will touch the perimeter of the second. If the figure inscribed should be a curved one it must have points of contact with all the sides or planes of the one circumscribed. To include in a list; to enter one's name among those of other persons for a given purpose. Figuratively. To set down in writing."

Definitions are here quoted from thirteen different dictionaries, ranging in dates from 1780 to 1892. They all give practically the same definitions, and they are expressed almost in the same terms. It will be seen from them that the primitive meaning of "inscritas" is NOT "in writing," but "engraved" or "carved."

There is no better way of arriving at the meaning of words in use by foreigners than by consulting the dictionaries written by themselves in their own language. The Spanish dictionaries above quoted all give a *geometrical* meaning of the word "*inscribir*:"

"To form or trace one figure within another so that all the angles of the one shall touch the perimeter of the other."

A piece of land is "*inscrita*" when its perimeter or boundary has been formed or traced so that its sides and angles touch, and do not lap over, the perimeter or boundary of surrounding lands—that is, when it has been absolutely segregated from all other lands by tracing out and distinctively marking its corners and boundaries, or, as is said in English, "*located*."

I have been a close and diligent student of the Spanish language and literature for the past twenty-four years, and know of no Spanish word that so accurately expresses the meaning of "*located*," as used in the treaty, as does the word "*inscritas*." There are other words that partially express the same idea, such as "*medir*," to measure, to survey; "*deslindar*," to delimit; "*mensurar*," to survey, and "*apercar*," also to survey; but none of them convey the full force and effect of "*locate*."

The word "*located*," as used in the treaty, is technical and means—

"To locate a tract of public land by surveying it and defining its boundaries." (Century Dictionary.)

No dictionary of the Spanish language published prior to the date of the treaty, that I have been able to find, defines the word "*inscribir*" as meaning to inscribe in the sense of recording. See definitions marked I, II, III, and IV herein. It is a reasonable presumption that the word was not used with that meaning at that time (date of treaty), and that the meaning given in the definitions herein quoted is the meaning used in the 6th article of the treaty of 1853, and that "*inscritas*" and "*located*" are equivalents of each other, and that the word "*located*" should neither be omitted from the English copy nor be replaced by the word "*inscribed*;" but if the word "*inscribed*" [(Geom.) To draw within so as to meet yet not cut the boundaries. Webster's Int. Dict.] should be inserted in lieu of the word "*located*," it would still be the geometric equivalent of the word "*located*," although the specific word "*located*" is not in any of these definitions.

There are other words meaning "*to locate*," but in a sense totally different from that used in the treaty, such as "*poner*," "*localizar*," "*meter*," "*colocar*," etc. "*Poner*" and "*meter*" mean "*to locate*" in the sense of putting a thing in a place; "*localizar*," "*to locate*" in the sense of ascertaining where a thing is; and "*colocar*," "*to put*

something in the place or in the form corresponding to it; figuratively; to give, provide, or facilitate to someone an employment, position, office, or occupation more or less lucrative; to cause persons assembled in the same place to occupy their respective seats, places, etc., according to their class, category, dignity, seniority, right, etc., which each one should have." (See any of the dictionaries cited herein.)

None of these words, in any of their meanings, translate the technical meaning of the word "*locate*," as used in the treaty, and to have put any of them there would have been an unpardonable barbarism.

The meaning, "*duly recorded*," given to the words "*debidamente registradas*," can not be questioned, for such is the usual and common meaning of those words in Spanish and Mexican legal literature, both ancient and modern.

The system of recording documents, as practiced in the United States, was unknown to Spanish law or custom at the time of Mexican independence, and entirely unknown to Mexican law or custom from that time till 1870, when it was adopted and incorporated in the Civil Code promulgated in that year, and is now found in the Revised Code of 1884, articles 3188 et seq. The system in vogue in New Spain and in Mexico from the conquest till 1870 is fully shown by the Laws of the Indies, among others the following:

Law LX, Title XXIII, Book II:

"We order and command that notaries keep their registers (*registros*) sewed and that they attach their notarial sign to them at the end of every year, under penalty of thirty dollars for our exchequer."

Law XVI, Title VIII, Book V:

"Notaries shall keep and always have in their power registers (*registros*) of all the documents, decrees, and informations, and all other public instruments that shall be made and executed before them, notwithstanding the

parties whom they affect, or their attorneys, may request and consent that there be no registry (*registro*), under penalty of suspension from office for one year, and ten thousand maravedis for our exchequer."

To more fully explain how the record or register was made, the following is quoted from Escriche's Dictionary of Legislation and Jurisprudence, edition of 1876, pages 917 and 918.

"Public instrument— * * *

"11th. * * *

"II. We have examined the essential circumstances required in order that the instrument made by a notary may be held to be public and sufficient at law or otherwise; and we are now going to inquire into the classes or species and its effects. The public instrument is divided into three classes, that is, into *protocol or register (registro)*, *original*, and *transcript*.

"*Protocol or register (registro)* is the matrix-instrument itself signed by those who execute it and the notary and written in the form and with the circumstances we have indicated. This instrument is written in a bound book of paper of stamp fourth, which it is the duty of the notary to make every year for the purpose of writing the matrix-instruments as they are being executed; or rather, it is written like all others in booklets, or on loose sheets of said stamp, and at the end of the year they are all put together and bound, so as to form the book of protocols or registers (*registros*), which is also called simply register (*registro*) or protocol, with the understanding that whatever be the manner in which the book is made, it is the duty of the notary to put his notarial mark (*signo*) at the end to certify that during the year he has not authenticated more instruments than those contained therein, as has already been more fully stated in the explanation of the ninth circumstance.

"This instrument is called *protocol*, because it is the first or principal; *register (registro)*, because it remains

in the office of the notary, so that, in cases of doubt, copies may be compared with it; and *matrix*, because it is the fountain and origin from which are taken copies, transcripts, and *testimonios*, which parties in interest request; *laws 8 and 9, title 8, book 1 of the Fuero Real*. Thus it is that the notary is obligated to keep in his custody and preserve the books of registers (*registros*) and protocols, so that if, through his fault or negligence, they are lost or misplaced or not made, he will have to indemnify the parties in interest for the losses and damages that befall them, and incur, besides, a fine and suspension or deprivation of office, according to the greater or less extent and transcendancy of his carelessness or malevolence; *law 2, title 8, book 1 of the Fuero Real*, and *laws 4 and 6, title 23, book 10, New Compilation*; and yet the instrument once executed, he can not tear it or render it useless, or take it from the book, although those who execute it may so desire, under pretext of having revoked it or having rescinded the contract, since, as keeper of the public archives, which he is of the registers (*registros*) in his possession, he has no authority therefor, and the only thing it is his duty to do in such case is to put thereon the proper notice of revocation or rescission.

“The first copy which is taken literally and faithfully from the matrix-instrument, or the protocol or register (*registro*), by the same notary who made and authenticated it, is called *original* or *primordial*. Rigorously only the matrix-instrument should be called *original*, because every instrument that is not the matrix is no more than a copy, and because it is signed only by those who execute it and by the witnesses in their case; but, notwithstanding all this, the name of *original* is given, although with a certain sort of implication in the terms, to the first copy taken from the matrix, because it is

taken immediately from the fountain, because it is the origin of all the copies, duplicates, and transcripts taken from it without recurring to the protocol, and because it is given, subscribed, and marked (*signada*) by the same notary who made, completed, and authenticated the protocol.

"*Transcript, duplicate or copy, which is commonly called testimonio por concuerda* (compared *testimonio*), is the copy made for an exhibit, not from the matrix instrument, but from the original, or from that which serves as such, although it be not the first. The transcript may be authenticated by the same notary before whom the execution was made, or by another to whom the original instrument is exhibited or presented for the purpose; and it must be written on paper of the same stamp as the original, the first and last sheets being written on the stamped paper prescribed for the amount contained therein and the intermediate sheets on that of stamp fourth, except the transcripts which remain in judicial decrees (*autos*) for the return of any original instrument which had been presented therein as an exhibit, for these shall be written on paper of stamp fourth. *Royal order of January 12th, 1832.*

"III. The original instrument can not be given marked (*signada*) by the notary until the matrix has been written in the book of protocols, and it must be a faithful and exact copy of this latter, including the signatures of those who executed it and of the witnesses in their case, without the addition or omission of any word, except the signature at the end, under penalty of nullity, loss of office by the notary, disqualification to hold another, and payment of damages to the party. *Law I, title 23, book 10, New Compilation.*"

It will be observed that the word *registro* (register or registry) is used in the laws cited and in the extract from Escriche, and not the word "*inscripcion*," nor the corresponding participle "*inscrito*." "*Registro*" is the noun

corresponding to the past participle "*registradas*," used in the sixth article of the treaty.

The second *original*, or first copy, is given to the party, and a minute of the delivery, called *toma de razon*, is entered in another book kept for that purpose. The *matrix* and the *toma de razon*, taken together, constitute the record as known to Spanish law and custom up to independence, and to Mexican law and custom up to 1870. In Mexico, since 1870, the former system is still required, and in addition the party is required to take his second *original* to the office of public records in the district where he is domiciled or is carrying on business, and have it inscribed (*inscrito*), or recorded, by being copied *verbatim et literatim* in a book kept there for the purpose.

The use of the word "*inscribir*" with the meaning "to record" is modern, and of the thirteen dictionaries cited herein that meaning is found only in the Dictionary of the Royal Academy, twelfth and last edition, Madrid, 1884, No. XI herein.

Article 9 of the regulations of November 21, 1828 (Reynolds, 141), provides that "Entries (*toma de razon*) of all the applications presented and grants made shall be kept in a book intended for the purpose."

The Sonora State law of July 11, 1834, article 38, section 8 (Reynolds, 186), makes it the duty of the auditor of the treasury "to correctly keep the book of *toma de razon* of every title, commission, or order of payment the Government shall issue, and to order the first officer to literally copy their contents with due separation."

Article 31 of the decree of December 4, 1846 (Reynolds, 263), provides that "Every decree of sale shall be signed by the board and the *toma de razon* thereof shall be made in the general treasury of the federation."

I investigated this question in 1887 and again in 1894, and have made a recent investigation, and I am convinced

that the expressions in question correctly translate each other, and there can be no other rational conclusion than that "*inscritas y debidamente registradas*" and "*located and duly recorded*" are equivalents of each other, word for word, in the order in which they are written in the treaty, and that no other interpretation does or can harmonize the two versions of this article of the treaty.

HENRY O. FLIPPER,
*Special Agent, Department of Justice,
United States Court of Private Land Claims.*

to 30.

MAR 26 1898
JAMES H. MCKENNEY,
CLE

Re: [illegible] for [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

MADE IN REPLY TO ORDER OF THE UNITED
STATES-MARY, MARY, AND MARY, AND
MARY.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

ROBERT PERRIN, APPELLANT, }
v. } No. 30.
THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.
BABOCÓMARI GRANT IN ARIZONA.

BRIEF IN REPLY ON BEHALF OF THE UNITED
STATES—STATE GRANTS, AND SANTA ANNA
DECREES.

I.

STATE GRANTS.

It is believed that none of the States of the Republic of Mexico in their constitutions asserted claim to the vacant public lands, either by right of original ownership or by virtue of the national law of August 4, 1824, classifying the revenues.

Counsel assert that various States claimed such lands by the express language of their constitutions, and name the following :

- Con. Texas and Coahuila, art. 10.
- Con. State of Mexico, art. 10.
- Con. Nuevo Leon, arts. 2, 3, 4.
- Con. Puebla, art. 14.
- Con. San Luis Potosi, arts. 2, 3.
- Con. Chihuahua, art. 36, secs. 2-7.
- Con. Sonora.

An examination of the constitution of Coahuila and Texas, probably the most aggressive of all, fails to disclose any such claim, nor did it pretend to exercise any power over the vacant lands by virtue of the national law of classification of revenues of August 4, 1824.

We had occasion to examine the constitution of Sonora in the case of the *United States v. Coe*, No. 8 (pp. 33 and 34, Reply Brief of U. S.). The translation of the two articles in that constitution as contained in the brief was taken from the printed translation furnished by appellee, and it was contended that article 293 did not apply to vacant public lands. The words "*landed property*" should not be in the translation, and there is nothing in the Spanish text that can be translated "*landed property*." A correct translation of this article is found in Reynolds's *S. and M. Laws*, p. 138. It will appear that the words "*landed property*" have been interpolated in the text.

The constitution, in defining the attributes of the congress of the state, says, article 109, section 20 (*Ibid.*, 137):

To make regulations for colonization in conformity with the laws.

The contention by various counsel as to the provisions of the Sonora constitution is extravagant, to say the least, and they must have been misled by translators.

A careful examination of the Spanish of the various constitutions of the States of Mexico to which we have had access fails to sustain in any way the assertion made in argument and in briefs filed by counsel in various cases involving the State grant question. (Coleccion de Constituciones, Tomo III, has been left with the clerk for the convenience of the court.)

The constitutions we have examined are the following :

Con. Coahuila and Texas, laws of Coahuila and Texas, p. 313 to 343.

Con. Occidente (Sonora and Sinaloa), Coleccion de Constituciones, p. 96.

Con. Tabasco, *ibid.*, p. 158.

Con. Tamaulipas, *ibid.*, p. 228.

Con. Vera Cruz, *ibid.*, p. 246.

Con. Xalisco, *ibid.*, p. 322.

Con. Yucatan, *ibid.*, p. 395.

Con. Zacatecas, *ibid.*, p. 479.

The constitution of Texas, in defining its revenues, does not in any manner assert that the vacant lands are a part of the revenue system. See laws of Coahuila and Texas, p. 340, arts. 203 to 210. (This book has been left with the clerk for convenience of the court.) Nor did Texas ever attempt to dispose of the vacant lands for other purposes than colonization, as is clearly shown by the memorial from the congress of the State to the National Congress. (*Ibid.* 301.)

The law of March 14, 1835, authorizing the disposition of 400 *sitios*, was annulled, which brought forth the memorial before referred to. The failure of the national congress to take favorable action on this memorial was one of the causes which led to the rebellion of Texas and her ultimate independence. The other states were also in rebellion at the same time, but Texas alone succeeded.

COLONIZATION UNDER STATE LAWS.

The laws of Sonora of May 20, 1825, and July 11, 1834, were not passed under the powers delegated by the third article of the national colonization law of August 18, 1824, and were not an attempted exercise of the power declared in the constitution as one of the attributes of its congress (Reynolds, 137), and was inconsistent with the entire policy of colonization as declared by the national colonization law of August 18, 1824.

The whole policy of colonization would have been defeated by such State laws claiming title and the *jus disponendi* under the law of August 4, 1824, *ad libitum*. (See testimony of Mr. Castañeda, record case of *United States v. Coe*, No. 8, p. 15.) It will be noted that Mr. Castañeda does not give the same translation of article 293 of the Constitution of Sonora as contained in the briefs of counsel.

The original power of colonization delegated to the States by the third article of the colonization law of August 18, 1824, was withdrawn as to the border and littoral States by the law of April 25, 1835. (Reynolds, 193.) Article 2 of this law is general in terms and applies to Sonora, and is as follows :

ART. 2. In the exercise of the powers the General Government reserved to itself in article 7 of said law of August 18, 1824, the border and littoral

States are prohibited from alienating their public lands for colonization thereon until the rules they shall observe in doing so are established.

This law indicates that the National Government not only refused to recognize any dispositions other than for colonization, but prohibited even that disposition on the part of the border and littoral States until the National Government should establish rules to be observed by such States, and Sonora, as well as Texas, was both a littoral and border State.

The ninth article of the law of August 18, 1824 (Reynolds, 122), by requiring that preference should be given Mexican citizens, removes all ground for the contention that the national law was for the benefit of foreigners.

SANTA ANNA DECREES AND DECREES ANNULING THEM.

See historical sketch, Reynolds S. and M. Laws, pp. 38 to 41, which concludes: "from these laws it will clearly be seen that the Mexican lawmakers believed that, under the Central System, a valid grant could not be made without the express authority of the supreme government, while, under the Federal System, a valid grant could only be made under the provisions of the colonization law of August 18, 1824." And it may be observed additionally, that the alienations for colonization in the border and littoral States could not lawfully be made except under rules and regulations provided therefor by the General Government. See article 4, law of August 18, 1824 (Reynolds, 121), and the law of April 25, 1835, articles 2 and 3 (Ibid., 193), referring to article 4 of the law of August 18, 1824.

It has been suggested that Santa Anna did not represent the Mexican Nation in the negotiations for the sale of the territory acquired by this country under the Gadsden Purchase, and that he was hampered by constitutional restrictions, requiring the legislative branch of the Government to concur in his action. On March 17, 1853, Santa Anna was declared elected President under the modified plan of Jalisco, which plan virtually provided for the election of a Dictator. (Reynolds, 39; also 312.)

On April 22 of that year a new basis for the Government was promulgated, by which all legislative bodies throughout Mexico were dissolved, and Santa Anna assumed supreme power. This is what is commonly called the beginning of the second epoch of the Central System of Government. The constitution which was expected to be formed was not promulgated till March 15, 1857 (*Ibid.*, 317), which is the constitution now in force in Mexico, with slight modifications, relating principally to the reelection of the President.

In the exercise of dictatorial powers, assumed on the 23d of April, 1853, and submitted to by the people, on September 21, 1853, he again abolished the States and reestablished the departments. (*Ibid.*, 39 and 323.)

While exercising such dictatorial powers, with all legislative bodies throughout Mexico dissolved, and pending the formation of a new constitution, he promulgated his decree of November 25, 1853, and on December 16, 1853, during the negotiations for the land acquired under the Gadsden Purchase, he declared himself perpetual Dictator. (*Ibid.*, 325.)

Under this condition of affairs the treaty was signed by his representatives, and by the representative of the United States on December 30, 1853, and it is respectfully submitted that the various decrees promulgated by Santa Anna and the succeeding governments of Mexico fix beyond question the status of the title of the public lands that were attempted to be disposed of by the intendants, commissaries-general, States, and departments through their respective officers.

They were the construction of the lawfulness and regularity of all such grants in Mexico. And while those decrees promulgated subsequently to the treaty are not binding upon the United States, those promulgated prior thereto are binding. Yet those promulgated after the treaty should not be without persuasive force, and when construed in connection with those promulgated prior to the treaty on the same subject-matter, justify the conclusion that none of the State grants are entitled to recognition under the thirteenth section of the act of March 3, 1891, creating the Court of Private Land Claims.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

ROBERT PERRIN, APPELLANT,	} No. 30.
r.	
THE UNITED STATES.	

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.
BABOCÓMARI GRANT IN ARIZONA.

TRANSLATION, ON BEHALF OF THE UNITED STATES, OF THE "EXPEDIENTE" OF THE BABOCÓMARI GRANT FILED BY APPELLANT, AND A MEMORANDUM OF INACCURACIES IN APPELLANT'S TRANSLATION.

Counsel for appellant having filed a translation of a certified copy of the *expediente* of the San Ignacio del Babocómari grant, as found in the archives at Hermosillo, it is deemed proper to file a translation thereof on behalf of the Government and to call attention to several material inaccuracies in appellant's translation. A few

of these inaccuracies clearly indicate the danger of relying upon translations of various proceedings for the disposition of lands attempted to be taken under the laws of Spain, Mexico, or any of the States thereof, when made by translators who do not understand or observe the technical use of words and phrases as contained and defined in the various laws.

Respectfully submitted.

JOHN K. RICHARDS,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.

MEMORANDUM OF INACCURACIES IN APPELLANT'S TRANSLATION.

1. On title-page the words "*sitios para cria de ganado mayor y caballada*" are not translated except by the words "live-stock ranch," placed in parenthesis. These Spanish words mean "tracts for breeding large cattle and horses," and have in the laws of Sonora a technical application comprehending a precise quantity of land authorized to be granted for such purposes.

2. The word "*expediente*" is translated "record" wherever it occurs. The "*expediente*" is only a part of the record and should be translated "*proceedings*."

The words "*sign manual*" occur 158 times in the translation for the Spanish "*rúbrica*." This latter word should be translated "*rubric*" (*Century Dict.*) or "*paraph*."

The word "*habilitado*" just preceding the petition is rendered by "*qualified*." As applied to the revival of stamped paper, it should be "*habilitated*."

The words "*suburban property*" in the petition are given as the translation of "*bienes de campo*." These words mean "*live stock*."

The word "*comprensión*" in the petition is translated "*limits*." Its correct meaning is "*jurisdiction*."

The word "*registrado*," in the petition, is translated "*recorded*." It should be "*registered*," in the sense of entering or filing upon a piece of land under the land laws.

In the decree appointing a surveyor the words "*alcalde de policia*" have been translated "*chief of police*." It should be "*police justice*." The "*alcalde*" is a judicial and administrative officer, with a chief of police under him.

In the same decree "*constituyente*" has been translated by "*constitutional*." It should be "*constituent*." The two terms are quite distinct.

In the same decree and elsewhere the word "*remate*" is translated by "*auction*." It should be "*final sale*."

"*Almonedas*" in the same decree is translated "*auctions*," whereas its correct meaning is "*offers to sell*." It occurs in the "*expediente*" a number of times and is inaccurately translated "*auctions*."

In the minute in which the surveyor accepts his appointment the word "*oficiales*" is translated "*officials*." It should be "*assistants*," as they were in no sense "*officials*," but subordinate helpers for the occasion, such as chainmen, etc.

In the same minute the words "*testigos de asistencia*" have been translated "*assistants*." They should be translated "*attending witnesses*." "*Asistencia*" does not mean "*assistants*," but the act of being present.

In the minute setting out the appointment and swearing of assistants the word "*rodmen*" is given as the translation of "*apuntadores*." It should be "*recorders*," persons who attend the surveyor and write down the field notes of the survey as it progresses.

In the survey itself the word "*viento*" is translated by "*angle*." It means "*wind*," literally, but in this place its meaning is "*course*" or "*direction*."

In the survey "*este norueste*" are translated "*east northeast*," instead of "*east northwest*."

"A monument in the shape of a cross" is given as the translation of "*mojonera cruz*." It should be "*cross monument*," i. e., a monument placed where two lines cross, without regard to the shape of the monument, in contradistinction to a "*mojonera esquina*," a "*corner monument*."

In the same place "*sesenta*," meaning "*sixty*," is translated "*seventy*."

In the survey "*cuadra*" is translated "*square*." It means being perpendicular or at right angles to.

In the designation of the courses, such as "*southeast by north-northwest*" for "*sueste para nornorueste*," the word "*para*," wherever it occurs, is translated "*by*." It should be translated "*to*," as points on the opposite side of the compass are being described.

In the survey also the word "*ultimos*" is translated "*latter*." It should be "*last few*."

In the appraisal of the land surveyed "*por receptoria*" are translated "*through commission*." They should be translated by "*ex officio*."

In the reference to the "*promotor fiscal*," these words are translated by "*comptroller*." They mean "*fiscal attorney*," who was merely the legal adviser of the treasurer-general of the State.

In the certificate of payment for the land the word "*cargo*" is translated by "*charged*." It should be translated by "*receipts*."

**GOVERNMENT'S TRANSLATION OF CERTIFIED
COPY OF THE EXPEDIENTE OF THE SAN YGNA-
CIO DEL BABOCÓMARI GRANT FILED BY APPEL-
LANTS.**

[TITLE PAGE.]

Copy of the proceedings and steps taken in the survey of eight *sitios* for breeding large cattle and horses at places called "San Ignacio del Babocómari," in behalf of citizen Ignacio Elias and Doña Eulalia Elias.

(Seal reading: Office of the treasurer-general, State of Sonora, February 8, 1898.)

(A fifty-cent stamp duly cancelled).

Citizen Treasurer-General:

I, Ignacio Bonillas, a resident of Nogales, and temporarily in this capital, appear before you and state: That, as appears by the letter which I annex in the original, Mr. Robert Perrin, owner of the land known as "San Ignacio del Babocómari," situate in the Territory of Arizona, United States of the North, needs a certified copy of the proceedings relating to said land existing in the archives of the treasury under your worthy charge, and said Mr. Perrin having authorized me to ask for said copy in his name, I pray you to be pleased to order that the corresponding copy be issued to me for the purposes that may suit the party in interest. I make the necessary protestations.

Hermosillo, February 5, 1898.

IGNACIO BONILLAS. [Rubric.]

Received on the seventh instant, and, as asked for, let the copy requested be issued.

V. AGUILAR. [Rubric.]

Stamp third. 2 reals. Years 1822 and 1823. Habilitated. The constitution sworn to by the King on March 9, 1820. Habilitated by the State of the Occident for the years 1827 and 1828.

A stamp which reads: "Habilitated by the Republic of Mexico for the years 1824 and 1825."

Mr. Treasurer-General:

Don Ignacio Elias and Doña Eulalia Elias appear before your lordship in due form and say: That, needing land for live stock, they denounce, in company with Don Rafael Elias, Captain Don Ignacio Elias, and Don Nepomuceno Felix, the public land bounded by the ranch of San Pedro, in the jurisdiction of Santa Cruz, as far as the place of Tres Alamos, binding ourselves to pay to the nation the fees corresponding to it, together with whatever else that may be just, until we acquire title by grant and confirmation, to which end you will be pleased to hold said public land as registered and denounced. Therefore, we pray you to be pleased to order done as we request, by which we shall receive grace.

Arispe, March 12, 1827.

By consent and request of Don Ignacio Elias.

JOAQUIN ELIAS. [Rubric.]

EULALIA ELIAS. [Rubric.]

COSALA, July 1, 1827.

The police justice of Santa Cruz will proceed, by authority which is conferred on him therefor, without prejudice to a third party who represents a better right, and after citation of coterminous owners, to the survey, valuation, and publication, for thirty consecutive days, of the lands mentioned in the foregoing denouncement, following in everything the sovereign decree of the honorable constituent congress of the State, No. 30, of May 20, 1825, and the regulations accompanying it, and, when these proceedings have been carried out, he will forward them to this office of the treasurer, summoning the bidders that appear to present themselves in person or by attorney at the final sale that must be held in said office after the customary three public offers of sale.

The treasurer-general of the State, Nicolas Maria Gaxiola, thus decreed and signed it.

GAXIOLA. [Rubric].

At the presidio of Santa Cruz, and on the fifth day of the month of October, of eighteen hundred and twenty-eight.

In view of the foregoing decree of the treasurer-general, let the provisions of said decree dated July 1, 1827, be complied with, and to that end, upon citation of the parties in interest, coterminous owners, expert surveyor, and other necessary assistants, who must be appointed, go myself to the *hacienda* of San Pedro for the purpose of proceeding to the survey of the *sitios* the parties in interest desire. Citizen Alexandro Franco, constitutional *alcalde* of the presidio of Santa Cruz, by

this decree so ordered and signed it, with attending witnesses, with whom he acts *ex officio* in default of a notary according to law.

For Alejandro Franco :

RAMON ROMERO.

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA.

At the *hacienda* of San Pedro, and on the eighteenth day of the month of October of eighteen hundred and twenty-eight, I, said judge, there being present citizen Ignacio Elias, for himself and as attorney for his sister Doña Eulalia, the coterminous owners, citizen Captain Ignacio Elias and Nepomuceno Felix, the expert surveyor, lieutenant-colonel of engineers, citizen José Maria Caballero, to whom I gave notice of and made known the foregoing decree, which they understood, and after they accepted the summons and the appointments the twentieth day of said month was designated for going to proceed to the survey, which they signed with me and those in my attendance in the usual manner.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

Having arrived at the place called San Ignacio de Babocómari, the twentieth day of said month and year, as the point where the surveys of citizens Captain Ignacio Elias Gonzalez and Nepomuceno Felix end—on the course east northwest by west southwest—accompanied by the party in interest, the expert surveyor, the assistants who are to be appointed, and attending witnesses, I ordered that before beginning the survey an inspection or ocular examination be made of the lands which were about to be surveyed on petition of citizen Ignacio Elias and his principal Doña Eulalia, and after they were well reconnoitered I found them to be places ample for raising large and small stock, the greater part of them having water flowing from permanent springs, with only the drawback of being very dangerous as the hiding places of the hostile Apache. And in witness thereof I enter it as a minute, which I signed with those in my attendance, with whom I act.

For Alejandro Franco:

RAMON ROMERO.	[Rubric.]
IGNACIO ELIAS.	[Rubric.]
JUAN NEPOMUCENO FELIX.	[Rubric.]
IGNACIO ELIAS GONZALEZ.	[Rubric.]
JOSÉ DE CABALLERO.	[Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

On the same day, month, and year, I, the judge, commissioned for the purpose of proceeding to the survey

of the land denounced, on a bald hillock in front of the small marsh of San Ignacio de Babocómari, appointed citizen Lorenzo Sortillon as tallyman, citizens Andres Mendoza and Pablo Elias as chainmen, citizens Antonio Campoy and Mauricio Neira as recorders, and, together with the expert surveyor, citizen Lieutenant-Colonel José Maria Caballero, they accepted said appointments, each for himself, and in the proper manner taking the customary oath to faithfully and lawfully discharge the duty assigned to each, without fraud or deception, and each acting according to his best intelligence and understanding; and those who knew how signed it with me and those in my attendance in the usual manner, to which I certify.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

LORENZO SORTILLON. [Rubric.]

PABLO ELIAS. [Rubric.]

For Andres Montoya, for Antonio Campoy, and Mauricio Neira:

FRANCISCO GAUNA. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

At said place, and on the same day, month, and year, in order to proceed to the survey, there being present the parties in interest, the assistants appointed, and the attending witnesses, I ordered that a cord of fifty *varas* be measured, and, its extremities being tied to two poles,

said survey was proceeded with by the expert surveyor, citizen José M. Caballero, who, setting up his compass, took the course east-northwest quarter east by west-southwest quarter west, where I caused a cross monument to be placed, and from said place, through said point, there were measured and counted one hundred cords, which terminated in a small valley in the neighborhood of some bald hillocks, where I caused a monument to be placed; and, as it was then late, I had the cord taken up, and the assistants and others withdrew to rest till the following day, when the survey would be continued, which I enter as a minute and sign, with those in my attendance and other parties in interest who accompanied me, to which I certify:

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

IGNACIO ELIAS GONZALEZ. [Rubric.]

LORENZO SORTILLON. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

For Antonio Campoy and Mauricio Neira:

FRANCISCO GAUNA. [Rubric.]

For Andres Montoya and for myself:

PABLO ELIAS. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

At the place where I ordered the second monument put, called the valley of San Ignacio de Babocómari, and accompanied by the party in interest, the expert sur-

veyor, the assistants appointed, in order to continue the survey on the same course, and on the twenty-first day of said month and year, I caused the cord of fifty usual varas to be examined again, and after it was examined and its extremities tied to two poles and the cord extended, there were measured and counted on the same course two hundred and forty-three cords, which terminated on top of a hillock, which faces toward the south-southwest wind, where the survey was suspended because of the broken character of the country, the many and deep gulches that lay in the direction of this survey, for which reason it was necessary for me and the expert surveyor to make an estimate of fifty-seven cords more for the completion of the side of three *sitios* for large stock, this estimate terminating at the hot spring facing the Santa Rita Mountains at the foot of a bald hill, where I ordered placed a corner monument, which faces the slope of said mountain and said hot spring, and from said point, because of the continuance of the broken character of the ground and the deep gulches, in order to form the end line of these *sitios* at right angles to the survey already described on said course, I and the expert surveyor estimated, on the course northwest quarter north-northwest to southeast quarter south-southwest, sixty cords to the foot of a small cottonwood tree, which is in a small valley at the foot of said Santa Rita Mountains, and for the completion of the end or perpendicular line on the opposite course, south-southwest quarter southeast to north-northwest quarter northwest, the other forty cords were estimated, and terminated on a hillock, where there were several oaks, where I ordered the correspond-

ing monuments placed, by which, with these three *sitios* for large cattle and that surveyed the day before, four *sitios* were completed; and, as it was past midday, I ordered that we withdraw to the center monument, which we did. Having reached said monument in front of the marsh of San Ignacio del Babocómari, having had the cord of fifty varas again examined and its extremities tied to the said two poles, the cord being extended on the course west southeast to east northwest, there were measured and counted seventy-four cords, which terminated on top of some hillocks in the vicinity of the end of the water, where, because of being already night, the survey of this day is concluded, all of us withdrawing in order to rest, which I enter as a minute, signing it, together with the party in interest, the expert surveyor, the assistants appointed, and the attending witnesses, to which I certify.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

LORENZO SORTILLON. [Rubric.]

For Andres Montoya and for myself :

PABLO ELIAS. [Rubric.]

For Antonio Campoy and Mauricio Neira :

FRANCISCO GAUNA. [Rubric.]

IGNACIO ELIAS GONZALES. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

At said place, and on the twenty-second day of said month and year, I, the judge commissioned, the party in interest, the expert surveyor, and other assistants appointed, having caused the cord of fifty *varas* to be examined and the course of the preceding day, the cord being extended on this same course, there were measured and counted twenty-six cords, for the completion of the hundred cords for the side of one *sitio* for large cattle, and on the same course, passing the cord over the tops of several hillocks and gulches, there were measured and counted three hundred cords, the last ones passing through a valley in the vicinity of the tanks from the spring, and these latter terminating above said tanks on a rocky hillock, where I ordered a corner monument placed, with which was completed the side of the other four *sitios* for large stock, where, the compass being set up by the expert surveyor, the cord being placed perpendicularly (*en cuadro*) and forming a right angle or angle of ninety degrees with the preceding course, the cord examined and extended on the course, south-southwest quarter southeast to north-northwest quarter northwest, there were measured and counted forty cords corresponding to those of the preceding end line of the other four *sitios*, these latter terminating on top of some bald hillocks, where I ordered a corner monument placed, and returning to the center of the measurement of this end line, on the opposite course, north-northwest quarter northwest to south-southwest quarter southeast, there were measured and counted sixty cords for the completion of the hundred cords, these latter terminating on the top of a very high hill, with which

the survey was concluded, making the total of eight *sitios* for large stock registered by citizen Ignacio Elias and his sister, Doña Eulalia, and he accepted and was satisfied with said survey, being cautioned to opportunely mark his boundaries with monuments of lime and stone, as is provided. And in witness thereof he signed it with me and all those who knew how with those in my attendance with whom I act *ex officio*, in default of a notary, according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

LORENZO SORTILLON. [Rubric.]

For Andres Montoya and for myself:

PABLO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

For Antonio Campoy and Mauricio Neira:

FRANCISCO GAUNA. [Rubric.]

IGNACIO ELIAS GONZALES. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

At the estate of San Pedro, and on October 24, 1828, I, the judge commissioner, in order to proceed to the appraisement and valuation of the lands surveyed in favor of said citizen Ignacio Elias and his sister, Doña Eulalia, comprised of eight *sitios* for cattle between both of them, saw fit to appoint as such appraisers, because I knew they possessed the necessary information, citizens

Pablo Elias and Ramon Romero, residents of the presidio of Santa Cruz, who were present at the survey; and having made said appointment known to them, they accepted it and swore in the manner corresponding to each, promising to make the appraisement without deception, fraud, or collusion; and in virtue thereof, they said together, and in accordance with the examination they had made, and knowing the orders that govern in the matter, that the value of sixty dollars should be given, and they give it to each one of *six sitios* for cattle, because they have permanent water; and to the other remaining two, for the completion of the eight *sitios* for cattle, *ten* dollars each, because they are absolutely without water, with which the total value of the eight *sitios* for cattle amounts to \$380; and having read this declaration to the appraisers, they ratified and signed it with me and those in my attendance with whom I act *ex officio* according to law.

For Alexandro Franco:

	RAMON ROMERO.	[Rubric.]
	PABLO ELIAS.	[Rubric.]
	RAMON ROMERO.	[Rubric.]
Attendance:	RAMON ROMERO.	[Rubric.]
Attendance:	FRANCISCO GAUNA.	[Rubric.]

At the presidio of Santa Cruz on the 29th of said month and year, I, said judge-commissioner, having returned to this presidio and in view of the foregoing proceedings and appraisement of the lands granted to citizen Ignacio Elias and his sister, Doña Eulalia, composed of eight sitios for large and small stock, ordered that they be published for thirty consecutive days, counted from

to-morrow, as provided by law. Thus the judge-commissioner provided and signed, with attending witnesses, to which I certify.

For Alexandro Franco:

RAMON ROMERO. [Rubric.]

Attendance:

RAMON ROMERO. [Rubric.]

Attendance:

FRANCISCO GAUNA. [Rubric.]

1st publication. At said place and on the 30th day of the month of October of said year, I, said judge of said presidio, caused various individuals to be called together, at the sound of the drum, in the public (*plaza*) square of said presidio and the public crier, Gregorio Gallegos, to say, in a loud and clear voice in the presence of all of them: The lands of the place called San Ignacio del Babocómari situated in this jurisdiction and comprising 8 sitios for breeding large and small stock in favor of citizen Ignacio Elias and his sister, Doña Eulalia, appraised in the sum of \$380 are sold on account of the nation; whoever desires to make a bid, that he shall make will be admitted upon applying to me. And no bidder having appeared, this minute was entered, which I signed, with those of my attendance.

For Alexandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

2nd publication. At said presidio, on the thirty-first day of said year and month, another publication was

made similar in all respects to the foregoing, and no bidder having appeared, I entered it as a minute, which I sign, with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

3rd publication. At said presidio, on the first of November of one thousand eight hundred and twenty-eight, another publication was made, and no bidders having appeared, it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

4th publication. At said presidio, on the second day of the month and year aforesaid, another publication was made, and no bidder appearing, this minute was entered, which I signed, with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

5th publication. At said presidio, on the third day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

6th publication. At said presidio, on the 4th day of said month and year, another publication was made, and no bidder having appeared I entered this minute, which I signed, with those in attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

7th publication. At said presidio, on the 5th day of said month and year, another publication was made, and there being no bidder it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

8th publication. At said presidio, on the 6th day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

9th publication. At said presidio, on the seventh day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

10th publication. At said presidio, on the eighth day of the current month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those of my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

11th publication. At said presidio, on the ninth day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

12th publication. At said presidio, on the tenth day of said month and year, another publication was made, and no bidders having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

13th publication. At said presidio, on the eleventh day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

14th publication. At said presidio, on the twelfth day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with the attending witnesses.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

15th publication. At said presidio, on the thirteenth day of said month and year, another publication was made, and there being no bidder it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

16th publication. At said presidio, on the fourteenth day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

17th publication. At said presidio, on the fifteenth day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

18th publication. At said presidio, on the sixteenth day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

19th publication. At said presidio, on the seventeenth day of said month and year, another publication was made, and no bidder resulting it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

20th publication. At said presidio, on the eighteenth day of said month and year, another publication was

made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

21st publication. At said presidio, on the nineteenth day of said month and year, another publication was made, and no bidder having resulted ~~it was entered as a~~ minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

22d publication. At said presidio, on the twentieth day of said month and year, another publication was made, and there being no bidder, it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

23d publication. At said presidio, on the twenty-first day of said month and year, another publication was made, and there being no bidders, it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

24th publication. At said presidio, on the twenty-second day of said month and year, another publication was made, and no bidder having resulted, it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubrics.]

25th publication. At said presidio, on the twenty-third day of said month and year, another publication was made, and no bidder appearing, it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

26th publication. At said presidio, on the twenty-fourth day of said month and year, another publication was made, and no bidder resulting, it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

27th publication. At said presidio, on the twenty-fifth day of said month and year, another publication was made, and no bidder having appeared, it was entered as a minute, which I signed with those in my attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

28th publication. At said presidio, on the twenty-sixth day of said month and year, another publication was made, and there being no bidder, it was entered as a minute, which I signed, with those in my attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

29th publication. At said presidio, on the twenty-seventh day of said month and year, another publication was made, and no bidder resulting it was entered as a minute which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubrics].

30th publication. At said presidio, on the twenty-eighth day of said month and year, the last publication was made, and no bidder having resulted it was entered as a minute which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubrics].

At said presidio, on said day, month, and year, these proceedings being concluded, forward them to the treasurer-general, upon citation of the party in interest, to the end that, going in person or by attorney to the capital at Alamos, he may be present at the three offers of sale of the lands published which are to be made at said capital. I, the judge commissioned, so decreed, ordered

and signed it, with those in my attendance according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubrics.]

Thereupon, on said day, month, and year, citizen Ignacio Elias being present for himself and as the attorney of his sister, Doña Eulalia, I gave him notice of and made known to him the foregoing decree, and, after acknowledging service thereof, he signed it with me and those in my attendance with whom I act *ex officio* according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubrics.]

Note.—These proceedings were forwarded with an official communication dated November 30, 1828, to the treasurer-general of the state, and in witness thereof, I attached my rubric thereto.

GAXIOLA. [Rubric.]

Citizen treasurer-general :

These proceedings contain the survey of eight *sitios* of land for breeding large stock and horses, made by the

justice of Santa Cruz, in the places of San Ignacio del Babocómari. I find nothing by way of objection to allowing them to be adjudicated to the applicants, unless it is that they are in excess of the number that can be granted by article 21 of the decree of May 20, 1825; nevertheless, if you are satisfied as to the requirements presented in the 22nd, I am of opinion that they may be sold in favor of the petitioners, unless another higher bidder appears.

Alamos, December 20, 1828.

FELIPE GIL. [Rubric.]

ALAMOS, *December 22, 1828.*

Concurring in the opinion of the fiscal attorney, it was my duty to order, and I do order, that the members of the board of sales be summoned for the purpose of making the last three offers and final sale of the land described in these proceedings.

GAXIOLA. [Rubric].

1st offer. In the city of Concepción de Alamos, on the twenty-second day of the month of December, of eighteen hundred and twenty-eight, the president and members that compose the board of sales having assembled for the purpose of making the first offer of the lands to which these proceedings refer, they ordered that various citizens be called together, at the sound of the drum, in the office of this treasury, and that, in their presence, Marcelo Parra, who acted as crier, proceed to make a publication, as he in fact did, in a loud and clear voice, saying: "The lands at the place called San Ignacio del Babocómari, situate in the jurisdiction of the presidio of

Santa Cruz, comprising eight *sitios* for breeding large stock and horses and small stock, surveyed in behalf of Don Ignacio Elias and Doña Eulalia Elias, and appraised at three hundred and eighty dollars. Whoever desires to make a higher bid, let him come before this board, where the bid he makes will be admitted." And no person whatever having appeared, it was entered as a minute in testimony thereof.

GAXIOLA. [Rubric.]

ALMADA. [Rubric.]

GIL. [Rubric.]

2nd offer. In said city, on the twenty-third day of the month of December of eighteen hundred and twenty-eight, the president and members that compose the board having assembled for the purpose of making the second offer of the lands set out in these proceedings, they ordered that it be made in the same terms as the first one preceding, which was done, he who acted as crier adding merely that on to-morrow the final sale would be made. And no bidder having appeared, it was entered as a minute in witness thereof, which the members of the board signed.

GAXIOLA. [Rubric.]

ALMADA. [Rubric.]

GIL. [Rubric.]

3rd offer. In said city of Concepción, on the twenty-fourth day of said month and year, the president and members of said board of sales having assembled, they ordered that the third offer and final sale of the lands mentioned in these proceedings be made, which was done.

in the same manner as at the two former offers, the crier adding only that at this moment the final sale is to be made. And the hour for noonday prayer of this day having been sounded without any bidder appearing, the crier announced finally in a loud voice: "One, two, three. Let it be sold, sold, sold. May it do good, good, good to Don Ignacio Elias and Doña Eulalia Elias." In these terms this act was concluded, the eight *sitios* of land for breeding large stock and horses at the place called San Ignacio del Babocómari, jurisdiction of the Presidio of Santa Cruz, being publicly and solemnly sold in favor of said parties in interest, for the sum of three hundred and eighty dollars, at which they were appraised.

And in due witness thereof this minute is entered, which the president and members of the board signed, with Captain Ignacio Elias as attorney of the parties in interest.

GAXIOLA.	[Rubric.]
ALMADA.	[Rubric.]
GIL.	[Rubric.]
IGNACIO ELIAS GONZALES.	[Rubric.]

ARISPE, *October 19, 1832.*

The payment of three hundred and eighty dollars, at which were sold the eight *sitios* of land comprised in the place called San Ignacio del Babocómari in behalf of citizen Ignacio Elias and Doña Eulalia Elias, the first a resident of the town of Rayon and the second of this capital, having been made into the office of the treasurer-general of the united State, as shown by the certificate

aggregated to these proceedings, let formal title to the grant be issued for their security. The treasurer-general of the State of Sonora so ordered and signed it, with attending witnesses, according to law.

MENDOZA. [Rubric.]

Attending witness :

MARIANO ROMO. [Rubric.]

Attending witness :

LUIS CARRANCO. [Rubric.]

On the twenty-fifth of December, 1832, title was issued to the grant of land of Babocómari, to which these proceedings refer.

MENDOZA. [Rubric.]

I, Nicolas Maria Gaxiola, treasurer-general of the revenues of the State of the Occident,

Certify that, at leaf 3, reverse, of the manual of this treasury for the current year, there is entered under this date the following entry:

Receipts for grants of lands, three hundred and eighty dollars paid by Captain Don Ignacio Elias in the name of Don Ignacio Elias and Doña Eulalia Elias, residents of Arispe, for the grant of eight *pitios* of land for breeding large stock and horses at the place called San Ignacio de Babocómari, jurisdiction of the presidio of Santa Cruz, appraised at said sum, which were sold in their favor without any opposition by the board of sales held in this office of the treasurer on the twenty-fourth day of last December. \$380.

GAXIOLA. [Rubric.]

IGNACIO ELIAS GONZALES. [Rubric.]

And in witness thereof I give these presents in Alamos, on the eighth of January, eighteen hundred and twenty-nine.

NICOLAS MARIA GAXIOLA. [Rubric.]

Crossed out—C—of no value—between lines—said, Lorenzo Sortillon, Juan Nepomuceno Felix—good.

It is an exact copy of its original, which I authenticate and sign in Hermosillo on the eighth of February, eighteen hundred and ninety-eight.

V. AGUILAR.

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